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Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

DONNA RAE EGELHOFF,

Petitioner,

v.

SAMANTHA EGELHOFF, A MINOR, BY AND THROUGH HER NATURAL PARENT KATE BREINER, AND DAVID EGELHOFF,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Washington

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001-1461 ("ERISA" or the "Act"), preempts the use of state law to override ERISA beneficiary designations made pursuant to the terms of ERISA plans.

2. Whether ERISA's anti-alienation provision, 29 U.S.C. § 1056(d)(1), which generally precludes alienation or assignment of ERISA pension plan benefits, preempts state laws that purport to deprive designated ERISA beneficiaries of their benefits under an ERISA pension plan.

PARTIES TO THE PROCEEDING

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Donna Rae Egelhoff respectfully petitions this Court for a writ of certiorari to review the judgment of the Supreme Court of Washington in this case. Review is warranted because the decision below exacerbates an existing and widespread circuit conflict on the first question presented in this case, and creates a conflict among the state and federal appellate courts on the second question presented. Review is also appropriate because the decision below is inconsistent with decisions of this Court, including *Boggs v. Boggs*, 520 U.S. 833 (1997). The questions presented in this case are frequently recurring and exceedingly important, and the rule of law applied by the court below strikes at the heart of the nationwide uniformity that is ERISA's central goal and promise. For all these reasons, certiorari should be granted.

OPINIONS BELOW

The opinion of the Supreme Court of Washington (App., *infra*, 1a-28a) is reported at 139 Wash. 2d 557, 989 P.2d 80 (1999). The opinion of the Court of Appeals of Washington (App., *infra*, 29a-44a) is reported at 93 Wash. App. 314, 968 P.2d 924 (1998). The summary judgment orders of the Superior Court of Washington for Pierce County (App., *infra*, 45a-46a, 47a-48a) are not reported.

JURISDICTION

The judgment of the Supreme Court of Washington was entered on November 18, 1999. On February 14, 2000, Justice O'Connor extended the time for filing a petition for a writ of certiorari to and including March 17, 2000. *See* Application No. 99A650. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the Constitution of the United States provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. CONST. art. VI, cl. 2.

ERISA's preemption provision, § 514(a) of the Act, provides in pertinent part:

> Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. . . .

29 U.S.C. § 1144(a).

ERISA's anti-alienation provision, § 206(d) of the Act, provides in pertinent part: "Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d)(1).

ERISA's fiduciary duty provision, § 404 of the Act, provides in pertinent part: "[A] fiduciary shall discharge his duties with respect to a plan . . . in accordance with the documents and instruments governing the plan . . . ." 29 U.S.C. § 1104(a)(1)(D).

Revised Code of Washington § 11.07.010 provides, in pertinent part:

> (1) This section applies to all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state of a decree of dissolution of marriage or a declaration of invalidity.
>
> (2)(a) If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity.
>
> * * * * *
>
> (5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:
>
> (a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account[.]
>
> * * * * *

WASH. REV. CODE § 11.07.010.[1]

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[1] As the court below noted (App., *infra*, 8a n.38), § 11.07.010 has been amended since 1993, the time period at

[Footnote continued on next page]

STATEMENT OF THE CASE

I. Factual Background

Petitioner Donna Rae Egelhoff is the former spouse of David A. Egelhoff. During their marriage, Mr. Egelhoff was employed by The Boeing Company. Boeing provided Mr. Egelhoff certain employee benefits, including a life insurance plan and a pension plan, both of which are governed by ERISA. Mr. Egelhoff designated Petitioner as his beneficiary under both ERISA plans. App., *infra*, 2a-3a.

Mr. Egelhoff and Petitioner were subsequently divorced pursuant to a decree of dissolution entered on April 22, 1994. The decree of dissolution listed the property awarded to Mr. Egelhoff, including "100% of his Boeing retirement 401K and IRA," but did not mention the life insurance plan, nor did it purport to address the rights of beneficiaries of either plan. App., *infra*, 3a; Clerk's Papers (No. 96-2-12626-3) at 65, 67.

Thereafter, Mr. Egelhoff was injured in an automobile accident and ultimately died intestate. At the time of his death, Petitioner remained the designated beneficiary of his life insurance and pension plan benefits. App., *infra*, 4a.

II. Proceedings Below

Respondents, who are Mr. Egelhoff's children from a prior marriage, are his statutory heirs under Washington state law. Respondents brought suit against Petitioner in Washington state court seeking the life insurance and retirement benefits due under the Boeing-sponsored ERISA plans, notwithstanding the fact that

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issue in this case. The provisions quoted in text, however, are unchanged.

Petitioner was the designated beneficiary of those plans. Respondents' claim of entitlement to those benefits was based on a Washington statute providing that employee benefit plan beneficiary designations made prior to a divorce are "revoked" and that employee benefit plan assets pass upon the employee's death as if the former spouse had predeceased the employee. WASH. REV. CODE § 11.07.010(2)(a) & (5)(a).

After the parties stipulated to the relevant facts (App., *infra*, 2a & n.2), the state trial court granted summary judgment for Petitioner. App., *infra*, 45a-48a. The court held that the Boeing employee benefit plans at issue "should be administered in accordance with [ERISA]" rather than § 11.07.010, and accordingly concluded that Petitioner, as "the designated beneficiary" of David Egelhoff's plans, was entitled to "all legal rights" thereto. App., *infra*, 46a, 48a.

Respondents appealed, and the state court of appeals reversed in a published opinion. App., *infra*, 29a-44a. Noting the trial court's holding "that ERISA preempted state law" (*id.* at 29a (footnote omitted)), the court of appeals expressly rejected that conclusion. The court placed principal reliance upon *Emard v. Hughes Aircraft Co.*, 153 F.3d 949 (9th Cir. 1998), *cert. denied*, 525 U.S. 1122 (1999), in which the Ninth Circuit approved a similar attempt to use state law to override an ERISA plan beneficiary designation. App., *infra*, 37a-42a. The court of appeals concluded that "ERISA does not preempt [§] 11.07.010, a statute similar to the one at issue in *Emard*," and accordingly that Respondents "are entitled to the proceeds" of the pension and insurance plans. *Id.* at 42a.

Petitioner sought review in the Supreme Court of Washington, which affirmed the judgment of the court of appeals. App., *infra*, 1a-28a. The supreme court began its analysis by observing that *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co.*, 514 U.S. 645 (1995), had

"signaled a significant retreat from" the previously "expansive reading" of ERISA's preemption provision. App., *infra*, 12a. The court expressed the view that "ERISA's preemptive reach" has been limited to ordinary field and conflict preemption. App., *infra*, 13a-14a (citing *California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A.*, 519 U.S. 316, 336 (1997) (Scalia, J., concurring)).

The supreme court then addressed Respondents' claim of entitlement to the proceeds of David Egelhoff's life insurance plan. App., *infra*, 15a-17a. Noting that the life insurance plan is a "welfare benefit plan" rather than a "pension benefit plan," the court held that the plan is exempt from ERISA's anti-alienation provision, 29 U.S.C. § 1056(d), which requires "pension" plans to "include provisions prohibiting the alienation of 'pension' benefits." App., *infra*, 16a-17a. The court concluded that § 11.07.010 is valid as applied to the life insurance plan and that "Respondents . . . are entitled to the proceeds of [the] employment-based life insurance policy." App., *infra*, 17a (citing *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825 (1988)).

The supreme court also determined that § 11.07.010 governs the distribution of David Egelhoff's pension plan benefits. App., *infra*, 17a-27a. The court began its analysis of this issue by citing the Ninth Circuit's decision in *Emard* for the proposition that "'ERISA's preemption clause no longer has the power to transmute into a federal question every issue that brushes against the periphery of an ERISA plan.'" App., *infra*, 18a (quoting 153 F.3d at 961). Against that backdrop, the court reasoned that "the mere fact that [§] 11.07.010 may operate upon the beneficiary designation in an ERISA plan is not itself a sufficient connection to require preemption." App., *infra*, 21a.

In its discussion of the *Emard* case, the supreme court conceded that "[t]he Ninth Circuit ERISA preemption analysis currently represents a minority view

among other United States Circuit Courts." App., *infra*, 22a & n.97 (citing conflicting authorities). The court nonetheless "f[ou]nd that decision at least persuasive in interpreting the impact of [§ 11.07.010] in this case." *Id.*

The supreme court also held that there is no conflict between § 11.07.010 and ERISA's anti-alienation provision, which concededly applies to the pension plan. App., *infra*, 17a, 23a-27a. In the court's view, even though the effect of § 11.07.010 is to nullify certain beneficiary designations made in accordance with the terms of ERISA plans, the statute is saved from preemption by the fact that it does not nullify *all* aspects of a particular plan's benefit allocation scheme. *Id.*

Based upon the foregoing analysis, the court held that "[§] 11.07.010 invalidates Petitioner Donna Rae Egelhoff's designation as beneficiary under Decedent David A. Egelhoff's life insurance plan" and that § 11.07.010 is not preempted by ERISA. App., *infra*, 27a. The court accordingly concluded that "Respondents . . . are entitled to receive the benefits under [David Egelhoff's] pension plan and the proceeds of his life insurance." *Id.* at 28a.

III. How The Federal Question Was Presented

Petitioner raised the issue of ERISA preemption at all stages of the proceedings in the state courts. Petitioner specifically sought summary judgment in the trial court on the ground that § 11.07.010 is preempted by ERISA. *See, e.g.*, Petitioner's Mem. of Auth. in Support of Mot. for Summ. J. in No. 96-2-12623-3 at 6 ("Donna Rae Egelhoff is Entitled to Judgment as a Matter of Law Because [§] 11.07.010 is Preempted by ERISA"). The trial court relied on that ground in granting summary judgment for Petitioner. App., *infra*, 46a, 48a (holding that the life insurance and pension plans at issue "should be administered in accordance with [ERISA]" rather than § 11.07.010); *see also id.* at

29a ("[t]he trial court reasoned that ERISA preempted state law") (footnote omitted).

Petitioner expressly raised her ERISA preemption defense in the state appellate courts. App., *infra*, 9a ("Petitioner claims [§] 11.07.010 is preempted by ERISA. She contends the broad preemption provision under 29 U.S.C. § 1144(a) precludes application of the state statute, [§] 11.07.010, to this case."); *id.* at 33a ("Donna argues that ERISA preempts [§] 11.07.010"). As discussed above, moreover, both courts considered and rejected Petitioner's ERISA preemption arguments on the merits. *Id.* at 8a-28a, 35a-43a. Thus, the questions presented in this petition were pressed and passed upon below, and are properly before this Court.

REASONS FOR GRANTING THE WRIT

I. REVIEW IS WARRANTED BECAUSE THE LOWER FEDERAL AND STATE COURTS ARE SHARPLY DIVIDED OVER THE QUESTIONS PRESENTED IN THIS CASE

A. The Decision Below Exacerbates An Existing Conflict Over The Applicability Of ERISA's General Preemption Provision To State Laws Purporting To Override ERISA Plan Beneficiary Designations

ERISA's general preemption provision, 29 U.S.C. § 1144(a), provides that ERISA supersedes all state laws that "relate to" an employee benefit plan. The question whether this provision preempts state laws that nullify or override ERISA plan beneficiary designations has arisen with great frequency and created a sharp division of authority among the lower state and federal appellate courts, resulting in three distinct approaches.

The decision below, declining to find ERISA preemption in these circumstances, adopts the minority position and exacerbates this ever-widening conflict. The Washington Supreme Court held that ERISA does not preempt a state statute that "revoke[s]" upon divorce a valid ERISA beneficiary designation naming an employee's spouse. App., *infra*, 8a, 27a-28a. The court thus permitted state law to override the disposition of ERISA plan benefits mandated by the terms of an ERISA plan.

In reaching its decision, the court below followed the Ninth Circuit's decision in *Emard v. Hughes Aircraft Co.*, which upheld a similar attempt to use state law to override an ERISA plan beneficiary designation. App., *infra*, 22a; *see Emard*, 153 F.3d at 956-61 (applying California's community property statute to override ERISA plan beneficiary designation). Addressing the question "whether ERISA preemption bars application of state law that would require the distribution of ERISA insurance proceeds to a person other than the designated beneficiary," *id.* at 956, the Ninth Circuit "determined that ERISA does not preempt California's law." *Id.* at 961.[2]

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[2] This Court denied certiorari in *Emard* (*see* No. 98-846, *cert. denied*, 525 U.S. 1122 (1999)), but that case did not offer an appropriate vehicle for resolving the questions presented here. In the first place, the Ninth Circuit relied on two alternative state-law grounds for its holding (*i.e.*, community-property law and constructive-trust doctrine, *see* 153 F.3d at 961), but the *Emard* petition challenged only the former ground, *see* Pet. in No. 98-846 at i (Questions Presented). Second, the *Emard* case posed a potential jurisdictional barrier to review of the merits that is absent here, because that case had been removed to federal court in reliance on the doctrine of "complete preemption." *Emard*, 153 F.3d at 953, 961-62. Thus, this Court's review of the

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A number of state appellate courts have likewise refused to enforce ERISA preemption in this context. In *Stackhouse v. Russell*, 447 N.W.2d 124 (Iowa 1989), for example, the Supreme Court of Iowa held that application of state law overriding a beneficiary designation was not barred by ERISA preemption. *Id.* at 126; *see also Brown v. Brown*, 422 S.E.2d 375, 379-80 (Va. 1992); *Critchell v. Critchell*, ___ A.2d ___, No. 98-FM-1304, 2000 WL 144364 (D.C. Feb. 10, 2000).

By contrast, however, the majority of courts to consider the issue have reached the opposite conclusion, squarely holding that state laws which purport to override a valid ERISA beneficiary designation are preempted by ERISA. Indeed, in adopting the approach to ERISA preemption enunciated by the Ninth Circuit in *Emard*, the court below recognized that its decision exacerbated the growing conflict on this issue, observing that "[t]he Ninth Circuit ERISA preemption analysis currently represents a minority view among other United States Circuit Courts." App., *infra*, 22a; *see also id.* at 90 n.97 (citing cases).

The Sixth Circuit, for example, has emphatically adopted the majority position, holding repeatedly and in

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questions presented in the *Emard* petition could have been jurisdictionally barred unless the state-law claims at issue in *Emard* were not only preempted by ERISA, but also fell within the narrower category of claims subject to "complete preemption." *See generally Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-67 (1987); 14B CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3722.1 (3d ed. 1998). Finally, the *Emard* petition did not offer an opportunity to resolve the second question presented here, because *Emard* involved solely a welfare benefit plan. This case, by contrast, involves both a pension plan and a welfare benefit plan.

a variety of contexts that ERISA preempts state laws that would assign ERISA plan benefits to someone other than the beneficiary designated in accordance with the terms of the ERISA plan. In *Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126, 130 (6th Cir. 1996), the court rejected an attempt to use a state-law divorce decree to invalidate an ERISA plan beneficiary designation, stating that "a designation of beneficiaries has a connection with or reference to an ERISA plan, preempting state law." *Id.* at 129. The court reasoned that, because "ERISA requires that a plan administrator discharge his duties 'in accordance with the documents and instruments governing the plan ....' 29 U.S.C. § 1104 (a)(1)(D)," the designation of beneficiary under the plan must control. *Id.* at 130. Thus, under the Sixth Circuit's analysis, ERISA preemption precludes application of state law that would result in the denial of benefits to a designated beneficiary. *Id.*; *see also Metropolitan Life Ins. Co. v. Marsh*, 119 F.3d 415, 420 (6th Cir. 1997) (same); *McMillan v. Parrott*, 913 F.2d 310, 311 (6th Cir. 1990) (same); *see also Mattei v. Mattei*, 126 F.3d 794, 809 (6th Cir. 1997), *cert. denied*, 523 U.S. 1120 (1998) (outside the limited statutory exception for qualified domestic relations orders, awards of property pursuant to state law "must fall before conflicting designations of ERISA beneficiaries").

The Fourth Circuit has likewise held that ERISA preempts the application of state law that would trump ERISA beneficiary designation forms on file with the plan administrator. *Metropolitan Life Ins. Co. v. Pettit*, 164 F.3d 857, 865 (4th Cir. 1998). The *Pettit* court reasoned that "designating the beneficiary of an ERISA life insurance plan sufficiently relates to a plan to come within the scope of the preemption clause." *Id.* at 862. In addition, the Fourth Circuit in *Pettit*, like the Sixth Circuit in the cases cited above, determined that ERISA requires a plan fiduciary to pay benefits to the person listed on the beneficiary form, based on his statutory duty to "discharge his duties with respect to a plan . . . in

accordance with the documents and instruments governing the plan." *Id.* at 863 (quoting 29 U.S.C. § 1104(a)). Notably, in reaching its decision that state law must yield to ERISA beneficiary designations, the Fourth Circuit expressly rejected the Ninth Circuit's decision in *Emard*, adopting instead the approach enunciated by the Sixth Circuit in *Marsh*. *Id.* at 865 n.8.

Similarly, the Second Circuit has held that ERISA prevents the use of state law to override an ERISA plan beneficiary designation. In *Krishna v. Colgate Palmolive Co.*, 7 F.3d 11 (2d Cir. 1993), the court agreed with the majority view that, "[b]ecause the designation of beneficiaries to [a] life insurance policy 'relates to' the ERISA plan, the preemption provision applies." *Id.* at 15 (citation omitted).

The Tenth Circuit has also ruled in favor of preemption, rejecting a contention that ERISA plan assets should pass via state law rather than in accordance with a valid beneficiary designation form. *Metropolitan Life Ins. Co. v. Hanslip*, 939 F.2d 904, 906 (10th Cir. 1991). In so deciding, the court barred application of an Oklahoma statute that, like the Washington statute at issue here, automatically "revoked" the beneficiary designation of a former spouse upon divorce. *Id.* A number of other courts have likewise held that state laws purporting to alter the determination of a plan's beneficiary are preempted by ERISA. *See, e.g., Brown v. Connecticut Gen. Life Ins. Co.*, 934 F.2d 1193, 1195 (11th Cir. 1991); *MacLean v. Ford Motor Co.*, 831 F.2d 723, 728 (7th Cir. 1987) ("When, as here, the terms of an employee pension plan under ERISA provide a valid method for determining the beneficiary, that mechanism cannot be displaced by the provisions of [state law].").

In addition to the two lines of authority discussed above, a number of appellate courts have adopted yet a third approach to the resolution of the questions at issue here. These courts have agreed with the majority view that ERISA preempts state laws purporting to alter

beneficiary designations, but have then held that federal common law (rather than ERISA itself) governs the determination whether the plan beneficiary designation form controls the award of plan benefits. The Eighth Circuit, for example, has held that "ERISA preemption makes the designation of plan beneficiaries and the determination of who is entitled to plan benefits questions of federal law." *Equitable Life Assurance Soc'y of the United States v. Crysler*, 66 F.3d 944, 948 (8th Cir. 1995). But having recognized the preemptive force of ERISA in this context, the court then held that federal common law controlled, and that "the federal common law to be applied is . . . the relevant state law." *Id.* at 949. Accordingly, the net result of the Eighth Circuit's approach is that "state insurance and family law principles" are allowed to override ERISA plan beneficiary designations. *Id.* at 950.

The Fifth Circuit has adopted this approach as well. In *Brandon v. Travelers Ins. Co.*, 18 F.3d 1321 (5th Cir. 1994), the court adopted the majority rule that "the designation of a beneficiary 'relates to' the provision of an ERISA plan to a sufficient degree to be preempted by that statute." *Id.* at 1325. The *Brandon* court accordingly concluded that ERISA preempted a Texas statute providing that "a life insurance plan participant must redesignate an ex-spouse after divorce in order to maintain that ex-spouse as the designated beneficiary." *Id.* at 1323, 1324-25. After finding the state law preempted, however, the court proceeded to apply "federal common law," which it ascertained by borrowing a modified version of the preempted Texas statute. *Id.* at 1326. In adopting this approach, the *Brandon* court expressly recognized the existence of a circuit conflict on this issue: "Courts that have faced the issues presented by this case have split as to whether ERISA itself supplies the rule of law or whether judges must look to federal common law for the controlling principles." *Id.* at 1325; *accord, e.g., Pressley*, 82 F.3d at 129.

The Seventh Circuit has also adopted the federal-common-law approach to resolution of this issue. *See, e.g., Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275, 278 (7th Cir. 1989) (en banc) ("[b]ecause ERISA preempts state . . . laws, . . . we must find the answer to [the question whether the ERISA beneficiary form controls the award of plan benefits] within ERISA itself or in the federal common law interpreting ERISA" and applying federal common law).

Thus, the state and federal appellate courts are sharply divided over the proper resolution of the first question presented in this petition, with each of the three conflicting legal rules enjoying the support of several jurisdictions. The need for this Court's review is compelling and immediate.

Both the court below and the Ninth Circuit acknowledged that their no-preemption approach to this issue represents a minority view (App., *infra*, 22a; *Emard*, 153 F.3d at 956), but suggested that this Court's decision in *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995), modified the law of ERISA preemption such that current doctrine requires a different result from that adopted by the majority of the circuits. App., *infra*, 12a-15a, 17a-18a, 22a-24a, 27a; *Emard*, 153 F.3d at 957. The *Travelers* Court held that in determining the scope of ERISA preemption, courts must look to "the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive." 514 U.S. at 656.

Contrary to the suggestions of the Ninth Circuit and the court below, however, *Travelers* and its progeny do not undermine the propriety of ERISA preemption in circumstances like those presented here, where the application of state law would nullify the allocation of plan benefits mandated by a beneficiary designation made in accordance with the terms of an ERISA plan.

Indeed, as noted above, numerous courts have found similar state laws preempted by ERISA in the aftermath of *Travelers* and its progeny, thus reaffirming the existence of a circuit conflict on this issue. The Sixth Circuit, for example, has issued several post-*Travelers* decisions holding that ERISA preempts state laws that purport to alter the designated recipient of ERISA plan benefits. *Pressley*, 82 F.3d at 130; *Marsh*, 119 F.3d at 420 (citing *Boggs v. Boggs*, 520 U.S. 833 (1997)); *Mattei*, 126 F.3d at 809. Similarly, the Fourth Circuit has expressly rejected the approach enunciated in *Emard* and followed by the court below. *Pettit*, 164 F.3d at 861-65 (citing *Travelers*, 514 U.S. 645).

Moreover, as Circuit Judge Hall noted in her dissenting opinion in *Emard*, *Travelers* and its progeny simply have no application in the circumstances of this case. As she explained, the cases adopting the majority view "might be distinguishable in light of recent Supreme Court precedent *if* the courts had simply speculated that state laws that alter beneficiary designations 'relate to' ERISA in some intangible fashion. However, the conflict between such state laws and ERISA is much more tangible and direct." *Emard*, 153 F.3d at 962 (Hall, J., concurring in part and dissenting in part).

Thus, it is clear that *Travelers* has not resolved the preexisting conflict over ERISA preemption of state laws that override ERISA plan beneficiary designations. To the contrary, that conflict has instead continued to widen. The division of authority among the lower state and federal courts on this issue is stark and widespread, and the passage of time will serve only to exacerbate this confusion and disagreement still further. Accordingly, this issue is ripe for resolution now.

B. The Decision Below Conflicts With Numerous Court Of Appeals Decisions Holding That State Laws Attempting To Regulate The Allocation Of Pension Plan Benefits Are Preempted By ERISA's Anti-Alienation Provision

Courts have likewise split over the interpretation of ERISA's anti-alienation provision, 29 U.S.C. § 1056 (d)(1), and its effect on attempted state law transfers of a named beneficiary's pension plan proceeds. The anti-alienation clause is a "spendthrift" provision, which provides that pension plan benefits "may not be assigned or alienated." 29 U.S.C. § 1056(d)(1). The provision applies only to pension plans, not welfare benefit plans, *Mackey v. Lanier Collection Agency & Serv.*, 486 U.S. 825, 837 (1988), and is designed to protect the interests of employees and their designated beneficiaries by preventing the diversion of "undistributed pension benefits, which are intended to provide a stream of income to participants and their beneficiaries." *Boggs*, 520 U.S. at 852. ERISA provides a limited exception to this anti-alienation provision for "qualified domestic relations orders ['QDROs']" (29 U.S.C. § 1056 (d)(3)(A)), and exempts them from ERISA's general preemption provision. 29 U.S.C. § 1144(b)(7).[3]

Most appellate courts that have considered the question interpret the anti-alienation provision to invalidate any attempt to use state law to change the allocation of ERISA pension plan proceeds, unless accomplished through a QDRO. As the Fourth Circuit

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[3] To be "qualified" as a QDRO, a state domestic relations order must meet certain statutory procedural requirements. 29 U.S.C. § 1056(d)(3)(A), (C) & (D). The court below did not hold or suggest that the divorce dissolving Petitioner's marriage with David Egelhoff constituted a QDRO.

explained in *Pettit*, ERISA "specifies how [] an alienation or assignment should be accomplished in the domestic relations context—through a QDRO." *Pettit*, 164 F.3d at 864. Thus, ERISA's preemption clause bars state law "from attaching ERISA plan benefits . . . if it did not qualify as a QDRO." *Id.* at 864 n.7. To hold otherwise, the court reasoned, "effectively would read the preemption provision exception . . . and the referenced QDRO provision . . . out of existence, thus violating a fundamental precept of statutory interpretation." *Id.* at 865 (citing *Travelers*, 514 U.S. at 659-62).

Similarly, the Ninth Circuit has held that ERISA's anti-alienation provision preempts a state law that would otherwise permit the alienation of a nonparticipant spouse's portion of pension plan benefits other than through a QDRO. *Ablamis v. Roper*, 937 F.2d 1450, 1458-59 (9th Cir. 1991). The Court in *Ablamis* reasoned that the attempted transfer pusuant to state law was a prohibited alienation under ERISA because it did not fit within the QDRO exception. *Id.* at 1455-56.[4]

The Sixth Circuit has similarly held that "[w]here there is no QDRO . . . awards of property pursuant to [state law] must fall before conflicting designations of ERISA beneficiaries." *Mattei*, 126 F.3d at 809; *Marsh*, 119 F.3d at 420-21 (same). The Seventh Circuit supports this view as well. *Fox Valley*, 897 F.2d at 279

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[4] In *Emard*, the Ninth Circuit found *Ablamis* inapplicable because the latter case involved a pension plan subject to the anti-alienation provision, whereas the plan at issue in *Emard* was a welfare benefit plan to which the anti-alienation provision did not apply. *Emard*, 153 F.3d at 956 n.9. As noted above, this case involves *both* a pension plan *and* a welfare benefit plan, and thus provides an opportunity to address both issues at once.

("ERISA preempts any attempt to alienate or assign [pension plan] benefits by a domestic relations order if that order is not a QDRO."); *see also id.* at 283 (Easterbrook, J., dissenting) (noting that application of state law altering a pension plan beneficiary designation "would not be valid given the spendthrift clause in ERISA . . . [which] bars the assignment of 'benefits'—that is, payments under the plan—without regard to the identity of the person making that assignment.").

The decision below is squarely inconsistent with all of the authorities cited above. The court below held that § 11.07.010 was not preempted by ERISA's anti-alienation provision even with respect to the pension plan. App., *infra*, 23a-26a. The court reasoned that § 11.07.010—which "revoked" upon divorce a former spouse's status as a named beneficiary, thereby assigning to other individuals the right to receive plan benefits—did not run afoul of ERISA's anti-alienation provision because the law "does not operate to divert benefit plan proceeds from distribution under terms of the plan documents." *Id.* at 25a. The court reasoned that the state law "does not require distribution of benefit plan assets to a third party, nor does it in any way direct payment of proceeds. It merely invalidates designation of a former spouse as beneficiary of a non-probate asset by creating the legal fiction that the spouse predeceased the now-deceased owner." *Id.* at 25a-26a. In short, even though § 11.07.010 would effectively transfer ERISA pension plan benefits from the designated beneficiary to other individuals, the court concluded that the law does not divert plan proceeds so as to conflict with ERISA's anti-alienation clause.

Because the decision below is in sharp conflict with the federal court of appeals decisions cited above on the issue of the proper application of ERISA's anti-alienation provision to state laws effecting transfers of pension plan benefits, this issue is likewise ripe for disposition by this Court.

II. REVIEW IS WARRANTED BECAUSE THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRECEDENTS

The decision below is also inconsistent with this Court's precedents, including *Boggs v. Boggs*, 520 U.S. 833 (1997). *Boggs* held that ERISA preempts state law that would allow a non-participant spouse to transfer an interest in pension benefits by testamentary instrument. *Id.* at 854. More specifically, the Court concluded that ERISA's anti-alienation provision prohibited an attempt by a plan participant's spouse to transfer by testamentary instrument to her children her community property interest in the participant's pension plans. *Id.* at 851. In addition, the *Boggs* Court held that ERISA preempted the children's "nonbeneficiary, nonparticipant interests" in the pension plans. *Id.* Applying *Boggs*' preemption analysis to the facts in *Egelhoff* leads inexorably to the conclusion that ERISA likewise preempts § 11.07.010.

First, the court below erred in concluding that ERISA's anti-alienation clause, 29 U.S.C. § 1056(d)(1), can coexist with state laws that purport to nullify ERISA plan beneficiary designations. "Statutory anti-alienation provisions are potent mechanisms to prevent the dissipation of funds." *Boggs*, 520 U.S. at 851. Under *Boggs*, § 11.07.010's nullification of a divorced spouse's status as a designated beneficiary and the resulting grant of pension plan benefits to persons other than the designated beneficiary plainly operates as an "assignment or alienation" of pension plan benefits, in violation of ERISA's spendthrift clause.[5] As the *Boggs*

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[5] An "assignment or alienation" includes "'[a]ny direct or indirect arrangement whereby a party acquires from a participant or beneficiary' an interest enforceable against a plan to 'all or any part of a plan benefit payment, which is, or

[Footnote continued on next page]

Court explained, ERISA's prohibition of alienation "is mandatory and contains only two explicit exceptions, *see* §§ 1056(d)(2) [plan loans], (d)(3)(A) [QDROs], which are not subject to judicial expansion." *Boggs*, 520 U.S. at 851. Because § 11.07.010 is neither a QDRO nor a plan loan, the exceptions do not apply, and the anti-alienation provision bars the attempted statutory alienation of plan benefits. *Id.*

The court below reasoned that § 11.07.010 "does not operate to divert benefit plan proceeds," but "merely invalidates designation of a former spouse as beneficiary . . . by creating [a] legal fiction." App., *infra*, 25a-26a. The *Boggs* Court expressly rejected a similar claim, holding that where an ERISA provision—in that case, both the anti-alienation provision and ERISA's surviving spouse annuity provision—requires that a particular party receive plan benefits, state law may not be used to prevent that party from receiving the benefits. The children in *Boggs* argued that ERISA's surviving spouse annuity provision, which required the payment of benefits to a nonparticipant surviving spouse, was not implicated by a surviving spouse's purported state-law obligation to pay plan proceeds to a competing claimant after she had received the benefits, because the latter obligation involved merely the "disposition of plan proceeds after . . . disburse[ment]." *Boggs*, 520 U.S. at 842. The Court rejected this claim, explaining that it would contradict the purpose of ERISA's survivor's annuity provision, which was to "ensure a stream of income to surviving spouses." *Id.* at 843.

[Footnote continued from previous page]
may become, payable to the participant or beneficiary.'" *Boggs*, 520 U.S. at 851 (quoting 26 C.F.R. § 1.401(a)-13(c)(1)(ii)).

Likewise, the Court noted that ERISA's anti-alienation provision is intended to "provide a stream of income to participants and their beneficiaries." *Id.* at 852. Thus, the fact that § 11.07.010 would alienate a beneficiary's interests via a "legal fiction" does not alter the reality that the pension proceeds would be diverted and the purpose of the anti-alienation provision defeated. As the Court stated in *Boggs*, "It would be inimical to ERISA's purposes to permit [third party] recipients to acquire a competing interest in undistributed pension benefits, which are intended to provide a stream of income to participants and their beneficiaries." *Id.* "In the face of this direct clash between state law and the provisions and objectives of ERISA, the state law cannot stand." *Id.* at 844.

Second, the conclusion that ERISA's spendthrift provision bars application of § 11.07.010 is supported by the *Boggs* Court's analysis of ERISA's "principal object" of "protect[ing] plan participants and beneficiaries." *Id.* at 845.[6] "The axis around which ERISA's protections revolve is the concept[] of participant and beneficiary." *Id.* at 854. By contrast, ERISA confers beneficiary status on a nonparticipant spouse or dependent only in "narrow circumstances delineated by its provisions," such as in the cases of a QDRO and surviving spouse annuity. *Id.* at 846. The *Boggs* Court noted that Congress's enactment of these narrow provisions protecting specific interests of spouses and children indicates that other claims "are not consistent with the statutory scheme." *Id.* at 847. The Court then held that

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[6] *See also id.* at 845-46 (noting that a plan fiduciary's responsibilities run only to participants and beneficiaries and that the plan assets are held exclusively to provide benefits to participants and beneficiaries and to cover reasonable administrative costs.).

Congress intended to preempt the children's interests in the retirement plans because the children were neither participants nor beneficiaries, and their claims were based on their mother's "attempted testamentary transfer, not on a designation by [the plan participant] or under the terms of the retirement plans." *Id.* at 848. Likewise, in this case, Respondents were neither participants nor beneficiaries under the ERISA plans. Rather, their claim to plan benefits is dependent on the operation of state law purporting to oust the designated beneficiary. As the *Boggs* Court's analysis makes clear, a state law attempting to nullify the rights of a designated plan *beneficiary* in favor of a *nonbeneficiary, nonparticipant* cannot withstand scrutiny. *Id.* at 850-51.

In addition, the decision below is inconsistent with a host of this Court's other ERISA preemption cases, including *Travelers*, in which the Court held that ERISA preempts state laws that "mandate employee benefit structures or their administration." 514 U.S. at 658. By overriding the provisions of the ERISA plans at issue here and effectively directing ERISA plan administrators and fiduciaries to dispense benefits in a manner other than (and directly contrary to) the distribution scheme mandated by the terms of the plan, § 11.07.010 plainly runs afoul of this principle. Indeed, the United States Secretary of Labor made precisely this point in her submission to the court below. *See* Secretary of Labor's Brief as Amicus Curiae in Support of Petitioners at 17-18 (Aug. 13, 1999) ("Secretary of Labor's Brief"), *reprinted at* App., *infra*, 59a-60a ("A state law that requires a plan to pay benefits in a manner contrary to the directives of the plan clearly affects and relates to that plan's administration. Such a law mandates the plan's administration in the manner in which *Travelers* instructs is prohibited by ERISA's preemption provision.").

The decision below is also inconsistent with this Court's precedent because § 11.07.010 would frustrate

the objectives of ERISA "to permit the nationally uniform administration of employee benefit plans." *Travelers*, 514 U.S. at 657. As the Court in *Boggs* explained, if state law were permitted to "result[] in a complex set of requirements varying from State to State . . . [this] result [would not] accord[] with [ERISA's] statutory scheme." *Boggs*, 520 U.S. at 851; *see also id.* at 842 (discussing "ERISA's concern for securing national uniformity in the administration of employee benefit plans"). As the Secretary of Labor argued persuasively in the court below, allowing state law to trump beneficiary designation forms on file with the plan administrator would "subject plans to a multiplicity of regulation varying with each state and prevent the nationally uniform administration of employee benefit plans that ERISA intended." Secretary of Labor's Brief at 2, *reprinted at* App., *infra*, 50a. In sum, the Washington Supreme Court's holding below—that ERISA did not preempt the Washington statute's attempt to "revoke" an otherwise valid ERISA plan beneficiary designation—is inconsistent with this Court's precedent, and certiorari is therefore warranted.

III. THE QUESTIONS PRESENTED IN THIS PETITION ARE OF RECURRING AND SUBSTANTIAL IMPORTANCE

The question whether ERISA preempts state laws mandating the payment of plan benefits to someone other than a named beneficiary is an important and recurring issue facing ERISA plans, administrators, fiduciaries, employees, beneficiaries and claimants across the country. In enacting ERISA, Congress emphasized the pervasive significance of employee benefit plans in our nation's economy:

> [T]he growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; . . . the continued well being and security of millions of employees and their dependents are directly affected by these plans; . . . they are affected

> with a national public interest [and] they have become an important factor affecting the stability of employment and the successful development of industrial relations . . . .

29 U.S.C. § 1001(a).

This Court has repeatedly recognized the importance of ERISA, as well as the increasing volume and significance of ERISA preemption questions: "ERISA pre-emption cases reflect[] the comprehensive nature of the statute, the centrality of pension and welfare plans in the national economy, and their importance to the financial security of the Nation's work force." *Boggs*, 520 U.S. at 839; *see also id.* at 836 (stating that the ERISA preemption question is "of undoubted importance"); *De Buono v. NYSA-ILA Medical and Clinical Servs. Fund*, 520 U.S. 806, 808 n.1 (1997) ("The boundaries of ERISA's pre-emptive reach have been the focus of considerable attention from this Court. This case is one of three addressing the issue this Term. And in the 16 years since we first took up the question, we have decided no fewer than 13 cases. The issue has also generated an avalanche of litigation in the lower courts.") (citations omitted).

As the large number of appellate decisions cited above attests, the questions presented in this petition arise with great frequency in both state and federal courts. In a variety of ways—whether through statutes like § 11.07.010,[7] state-law divorce decrees, testamentary transfer law, community property law, or the law of

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[7] *See, e.g.*, MONT. CODE ANN. § 72-2-814 (revoking designations of former spouses as beneficiaries of life insurance and pension plans); OHIO REV. CODE ANN. § 1339.63 (same); OKLA. STAT. tit. 15, § 178 (same); PA. CONS. STAT. § 6111.2 (same).

constructive trusts—numerous states have sought to impose varying and inconsistent restrictions on the ability of ERISA plan participants to designate beneficiaries in accordance with the applicable ERISA plans. *See Brandon*, 18 F.3d at 1324 (observing that the circumstances "presented by the facts of the present case have been confronted with surprising frequency by a variety of our sister circuits").

The problem created by the widening circuit conflict at issue in this case is particularly acute for sponsors and administrators of multiemployer plans with participants in multiple states across the country. The widespread disagreement among the lower courts compels these entities to administer their plans differently in different jurisdictions, contrary to Congress's intent in enacting ERISA's preemption clause. "The basic thrust of the pre-emption clause [] was to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans." *Travelers*, 514 U.S. at 657. ERISA preemption seeks to ensure that plan sponsors and administrators are subject to uniform regulation of employee benefit plans in each of the 50 States without the administrative and financial burden of complying with a hodgepodge of differing and inconsistent state and local regulations. "[T]he goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between the States and the Federal Government . . . [and to prevent] the potential for conflict in substantive law . . . requiring the tailoring of plans and employer conduct to the particularities of the law of each jurisdiction." *Id.* at 656-57 (citation omitted).

In those jurisdictions that allow ERISA plans to pay benefits by looking only to the terms of the plan and the valid beneficiary designation forms on file, the determination and payment of the correct beneficiaries can proceed efficiently in the normal course of business. Thus, ERISA's express requirement that benefit plans be

administered in accordance with the governing plan documents (*e.g.*, 29 U.S.C. §§ 1104(a)(1)(D), 1132(a)) leads to the uniform and cost-effective administration of plans intended by Congress.

By contrast, in those jurisdictions permitting state law to override plan beneficiary designations, entities that sponsor and administer ERISA plans must face the administrative and financial burden of researching, complying with, and potentially litigating over the validity and interpretation of state laws that purport to override such beneficiary designations. In addition, ERISA plans are threatened with the substantial risk that they may find themselves paying the same benefits twice, once to a beneficiary designated under the plan and a second time to a different recipient designated by state law.[8] Similarly, plans and others may face liability under ERISA for failure to comply with the terms of the applicable plan or for breach of fiduciary duty if they administer the plan in accordance with the state statute rather than the governing plan documents. 29 U.S.C. §§ 1104(a)(1)(D), 1132(a).

All of these problems stem from the fact that permitting state law to affect plan beneficiary designations undermines "'the intent of Congress that ERISA plans be uniform in their interpretation and simple in their application.'" *Emard*, 153 F.3d at 963 (Hall, J., concurring in part and dissenting in part) (quoting *McMillan*, 913 F.2d at 312). As Judge Hall recognized in her *Emard* dissent, "Requiring plan administrators to look not only to formal beneficiary designations, but also to state law, before disbursing benefits would undermine the efficient functioning of ERISA plans and the certainty of both plan administrators and designated beneficiaries as to who is entitled to benefits." 153 F.3d at 963 (Hall, J., concurring in part and dissenting in part).

The Second Circuit has likewise recognized that "[t]here is a strong interest in uniform, uncomplicated administration of ERISA plans, many of which function in a number of states," and that "[i]t would be counterproductive to compel the Policy administrator to look beyond those designations into varying state laws regarding wills, trusts and estates, or domestic relations to determine the proper beneficiaries of Policy distributions." *Krishna*, 7 F.3d at 16; *see also Pettit*, 164 F.3d at 863-64; *McMillan*, 913 F.2d at 312. In short, as the Secretary of Labor cogently observed in her submission below, the compelling interest of ERISA plans "in avoiding a multiplicity of conflicting state regulation is also implicated [in this case] and requires preemption." App., *infra*, 57a.

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[8] Indeed, this case provides a perfect illustration of that risk. The administrator of David Egelhoff's life insurance plan distributed the plan benefits to Petitioner in accordance with the valid beneficiary designation form on file with the plan. Respondents have now brought suit against the administrator, seeking to compel it to pay them the full amount of the life insurance benefits as well. *Egelhoff v. Aetna Life Ins. Co.*, No. 99-2-08735-1 (Wash. Super. Ct., Pierce County, filed June 17, 1999).

CONCLUSION

The existing conflict among the lower state and federal appellate courts poses a serious and recurring problem in the administration of ERISA plans, which is currently ripe for resolution by this Court. For all of the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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March 16, 2000

APPENDIX

APPENDIX A

IN THE MATTER OF THE ESTATE OF DAVID A. EGELHOFF, DECEASED; SAMANTHA EGELHOFF, a minor by and through her natural parent Kate Breiner; and DAVID EGELHOFF, a single person,
Respondents,

v.

Donna Rae Egelhoff and John Doe Egelhoff, wife and husband,
Petitioners.

No. 67626-7.

Supreme Court of Washington,
En Banc.

Argued Oct. 14, 1999.

Decided Nov. 18, 1999.

* * * * *

SMITH, J.

Petitioner Donna Rae Egelhoff, recently divorced former spouse of Decedent David A. Egelhoff, seeks review of a decision of the Court of Appeals, Division II, which reversed orders of summary judgment granted by the Pierce County Superior Court in her favor in an action by Respondents, Samantha Egelhoff and David Egelhoff (David A. Egelhoff, Jr.), children of decedent

from a prior marriage.[1] The Court of Appeals reasoned the children of decedent were entitled to the benefits of decedent's pension plan and employment-based life insurance policy under RCW 11.07.010, and that the federal Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1461, did not preempt a state statute which revoked entitlement of a former spouse to life insurance proceeds and pension plan benefits upon dissolution of a marriage. We affirm.

QUESTION PRESENTED

The question presented in this case is whether under RCW 11.07.010 Decedent David A. Egelhoff's designation during their marriage of his then-spouse, Donna Rae Egelhoff, as beneficiary of his pension plan and employment-based life insurance policy was revoked upon dissolution of their marriage and whether any disposition under the insurance policy and pension plan is preempted by ERISA.

STATEMENT OF FACTS

The facts in this case are stipulated.[2] Decedent David A. Egelhoff and Donna Rae Egelhoff were married on November 4, 1988 in Tacoma, Washington.[3] They separated on October 1, 1993.[4]

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[1] The caption of the case illogically refers to Petitioners as "Donna Rae Egelhoff and John Doe Egelhoff, wife and husband." The Estate of David A. Egelhoff declined to participate in this appeal.

[2] Pet. for Review to Washington State Supreme Court of Court of Appeals Decision Terminating Review, filed Jan. 27, 1999, at 1-5; *see also* Clerk's Papers (No. 96-2-12626-3) at 122-24.

[3] Pet. for Review at 1.

[4] *Id.* at 2.

During their four and one-half year marriage, Decedent David A. Egelhoff designated Donna Rae Egelhoff as beneficiary under his Disability and Life Insurance Plan[5] and his Defined Contribution Profit Sharing Plan,[6] jointly provided by him and his employer, the Boeing Company.[7]

The parties stipulated that ERISA governs administration of David A. Egelhoff's Boeing life insurance policy and pension plan. Petitioner Donna Rae Egelhoff filed a *pro se* petition for dissolution of marriage in the Pierce County Superior Court on December 30, 1993.[8] A decree of dissolution was entered on April 20, 1994.[9] In a document incorporated in the decree,[10] David A. Egelhoff was awarded "100% of his Boeing retirement 401K and IRA."[11]

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[5] Clerk's Papers (No. 96-2-12626-3) at 100-14. (An incomplete "summary" of the Boeing Company's Disability and Life Insurance Plan is included in the record).

[6] Clerk's Papers (No. 94-4-01619-1) at 38-52. The Boeing Company's employee "pension plan" is also referred to as a Voluntary Investment Plan.

[7] Pet. for Review at 2-5.

[8] Clerk's Papers at 87 (No. 94-4-01619-1).

[9] Clerk's Papers (No. 96-2-12626-3) at 61-69. David A. Egelhoff and Donna Rae Egelhoff agreed on Findings of Fact and Conclusions of Law, incorporating Exhibits "A" and "B." Exhibit "A" identifies property awarded to David A. Egelhoff and Donna Rae Egelhoff individually, while Exhibit "B" identifies liabilities of each party.

[10] *Id.* (Exhibit "A") at 67.

[11] *See* 26 U.S.C. § 401(k) and 26 U.S.C. § 408(a) (Definitions of "401K" and "IRA").

On June 23, 1994, two months after the dissolution, Decedent David A. Egelhoff was injured in an automobile accident.[12] He died from his injuries on July 8, 1994.[13] He died intestate.[14] At the time of his death, Donna Rae Egelhoff remained beneficiary of record under both his life insurance policy and his pension plan.[15] Decedent was paying court ordered child support at the time of his death.[16]

The proceeds of Decedent David A. Egelhoff's life insurance plan, totaling $46,000.00, were paid to his former spouse, Petitioner Donna Rae Egelhoff, on August 3, 1994.[17] On November 15, 1996, decedent's statutory heirs,[18] Samantha Egelhoff, a minor, and

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12 Clerk's Papers (No. 96-2-12626-3) at 27.

13 *Id.*

14 Pet. for Review at 2.

15 *Id.* at 3-6

16 *Id.*

17 Clerk's Papers (No. 96-2-12626-3) at 95-97.

18 *See* RCW 11.04.015, which provides in pertinent part:

> **"11.04.015 Descent and distribution of real and personal estate.** The net estate of a person dying intestate, or that portion thereof with respect to which the person shall have died intestate, shall descend subject to the provisions of RCW 11.04.250 and 11.02.070, and shall be distributed as follows:
>
> ". . . .
>
> "(2) Shares of others than surviving spouse. The share of the net estate not distributable to the surviving spouse, or the entire net estate if there is no surviving spouse, shall descend and be distributed as follows:

[Footnote continued on next page]

David Egelhoff, children from his first marriage to Kate Breiner,[19] filed a complaint against Donna Rae Egelhoff in the Pierce County Superior Court to recover the proceeds of their father's life insurance which had been paid to her.[20] She filed her answer on August 6, 1997, asserting the heirs' claims are preempted by ERISA, 29 U.S.C. § 1144(a).[21] She then filed a motion for summary judgment on August 27, 1997.[22] The heirs, relying upon RCW 11.07.010, opposed the motion, arguing that Washington law revoked Petitioner's designation as beneficiary under the life insurance plan.[23]

On October 10, 1997, the Pierce County Superior Court, the Honorable Frederick B. Hayes, granted summary judgment in favor of Petitioner Donna Rae Egelhoff.[24] The Court concluded that David A. Egelhoff's life insurance plan "should be administered in accor-

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[Footnote continued from previous page]

> "(a) To the issue of the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or if of unequal degree, then those of more remote degree shall take by representation.
>
> ". . . .

19 Pet. for Review at 2.

20 Clerk's Papers (No. 96-2-12626-3) at 1-5.

21 *Id.* at 6-10.

22 *Id.* at 11-12.

23 *Id.* at 13-26. (The heirs also submitted to the trial court a certified statement of Kate Breiner purporting to establish that "D[onna] E[gelhoff] knew that D[avid] E[gelhoff] intended to remove her as beneficiary and that it was the apparent agreement of D[onna] E[gelhoff] and the decedent.")

24 *Id.* at 42-44.

dance with the Employment Retirement Income Security Act and the designated beneficiary, Donna Rae Egelhoff shall have all legal rights to the proceeds which have been paid thereto."[25]

On May 30, 1997, while asserting a claim to their father's life insurance proceeds, the heirs also moved for summary judgment to recover his pension plan benefits then held by Boeing.[26] The Boeing Company's employee pension plan provided that the children of the deceased become beneficiaries if the proceeds do not pass to the named beneficiary and there is no surviving spouse.[27] Respondents claimed that under the property distribution incorporated in the dissolution decree Petitioner Donna Rae Egelhoff waived her right to benefits under their father's pension plan.[28]

On August 8, 1997, the Pierce County Superior Court, the Honorable Karen L. Strombom, ordered that the pension plan benefits "should be administered in accordance with the Employment Retirement Income Security Act of 1974 ('ERISA') and that the designated beneficiary, Donna Rae Egelhoff shall have all rights thereto[.]"[29] In addition, the Court stayed the order for summary judgment on August 15, 1997 and directed that pension plan benefits not be distributed to any party pending outcome of the case on appeal.[30]

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25 *Id.* at 43.

26 Clerk's Papers (No. 94-4-01619-1) at 1-2.

27 *Id.* at 45.

28 Respondents valued their father's pension plan benefits on May 28, 1997 at $35,000.00, subject to federal taxes. *Id.* at 6-22.

29 *Id.* at 115.

30 *Id.* at 117-18

Respondents, the statutory heirs, on August 15, 1997 filed in the Court of Appeals, Division II, an appeal of the order disposing of their father's *pension plan benefits*.[31] On October 22, 1997, they filed an appeal of the order disposing of their father's *life insurance benefits*.[32] The Court of Appeals on November 13, 1997 granted their motion for consolidation of both cases.[33] On December 23, 1998, the Court of Appeals, Division II, the Honorable J. Robin Hunt writing, reversed the summary judgments of the Pierce County Superior Court, concluding that RCW 11.07.010 was not preempted by ERISA.[34] The Court determined the children of Decedent David A. Egelhoff were entitled to the benefits of his pension plan and employment-based life insurance under that statute.[35] The Court reasoned the Washington statute did not have a "reference to" nor a "connection with" the ERISA plan, and did not significantly affect administration of the plan,[36] thus lawfully invalidating designation of the former spouse, Donna Rae Egelhoff as beneficiary on any nonprobate asset held by ERISA plan participant Decedent David A. Egelhoff at the time of dissolution of their marriage.

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31 *Id.* at 120.

32 Notice of Appeal to Court of Appeals, Division II (No. 96-2-12626-3) filed Oct. 22, 1997.

33 Letter of the Clerk of the Court of Appeals, Division II, dated Nov. 13, 1997.

34 *In re Estate of Egelhoff*, 93 Wash.App. 314, 968 P.2d 924 (1998), *review granted*, 137 Wash.2d 1032, 980 P.2d 1283 (1999).

35 *Id.* at 327, 968 P.2d 924.

36 *Id.* at 324-25, 968 P.2d 924.

Petitioner Donna Rae Egelhoff petitioned this Court for review which was granted on June 1, 1999.[37]

DISCUSSION

Prior RCW 11.07.010 provided:[38]

(1) This section applies to all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state of a decree of dissolution of marriage or a declaration of invalidity.

(2)(a) If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity.

. . . .

(5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:

(a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account[.]

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37 Order Granting Pet. for review (No. 67626-7) dated June 1, 1999.

38 Laws of 1993, ch. 236, § 1 (emphasis added). The statute was amended in 1994 and 1997, but the amendments are not relevant to this case.

. . . .

(Emphasis added).

Petitioner claims RCW 11.07.010 is preempted by ERISA. She contends the broad preemption provision under 29 U.S.C. § 1144(a) precludes application of the state statute, RCW 11.07.010, to this case. Respondents argue, to the contrary, that RCW 11.07.010 is not preempted by ERISA. They assert that the statute lawfully invalidated Petitioner's status as an ERISA plan beneficiary of their father's nonprobate assets upon dissolution of her marriage to their father. They argue that there is consequently no named beneficiary under their father's pension plan and life insurance policy; and that his children should receive the benefits under his pension plan.[39] The Court of Appeals agreed with Respondents and awarded to them their father's pension plan benefits and life insurance proceeds.

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39 David A. Egelhoff's Voluntary Investment [pension] plan provides:

"The VIP Office will only recognize beneficiary designations and changes that are filed on the official VIP beneficiary designation form and received before your death. You may not designate or change a beneficiary by using other documents such as divorce decrees, prenuptial agreements, wills or trusts. If you have not designated a beneficiary on the appropriate form, you have an invalid beneficiary designation, or your beneficiary is no longer living, benefits will be paid in the following sequence:

"1. To your surviving spouse.

"2. If there is no surviving spouse, to your children in equal shares.

"3. To another relative designated by the Voluntary Investment Plan Committee or to your estate."

Clerk's Papers (No. 94-4-016919-1) at 45.

PREEMPTION

ERISA is a comprehensive federal statute which regulates employee pension and welfare plans.[40] It is designed to promote the interests of employees and their beneficiaries in employee benefit plans.[41] ERISA contains a broad preemption provision that supersedes state laws that "relate to" employee benefit plans. 29 U.S.C. § 1144(a) states "[ERISA] shall supersede any and all State laws insofar as they . . . relate to any employee benefit plan [covered by the statute]."[42]

29 U.S.C. § 1144(a) reads:

> **(a) Supersedure; effective date**
>
> Except as provided in subsection (b) of this section, *the provisions of this subchapter and subchapter Id. of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section*

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40 29 U.S.C. §§ 1001-1461. *See Cutler v. Phillips Petroleum Co.*, 124 Wash.2d 749, 756, 881 P.2d 216 (1994), *cert. denied*, 515 U.S. 1169, 115 S.Ct. 2634, 132 L.Ed.2d 873 (1995).

41 *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90, 103 S.Ct. 2890, 2896, 77 L.Ed.2d 490 (1983); *see* 29 U.S.C. § 1001(b).

42 Additional United States Supreme Court cases broadly interpreting ERISA's preemption language include: *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90, 103 S.Ct. 2890, 2896, 77 L.Ed.2d 490 (1983); *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 829, 108 S.Ct. 2182, 100 L.Ed.2d 836 (1988); *District of Columbia v. Greater Wash. Bd. of Trade*, 506 U.S. 125, 113 S.Ct. 580, 121 L.Ed.2d 513 (1992); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384, 112 S.Ct. 2031, 119 L.Ed.2d 157 (1992).

> *1003(b) of this title*. This section shall take effect on January 1, 1975

(Emphasis added.)

In earlier United States Supreme Court cases, the Court characterized ERISA's preemption clause as "having a broad scope"[43] and "expansive sweep,"[44] being "conspicuous [in] its breadth" and written "'deliberately expansive' language [that] was 'designed to "establish pension plan regulation as exclusively a federal concern."'"[45]

In *Shaw v. Delta Air Lines, Inc.*, the United States Supreme Court concluded that state law "relates to" an employee benefit for purposes of § 1144(a) "if it has a connection with or reference to such a plan."[46] The Court also concluded that state law may "relate to" a benefit plan, and consequently be preempted, "even if the law is not specifically designed to affect such plans, or the effect is only indirect" and includes preemption of laws that are consistent with ERISA's policies and substantive requirements.[47]

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43 *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 739, 105 S.Ct. 2380, 2388-89, 85 L.Ed.2d 728 (1985).

44 *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 47, 107 S.Ct. 1549, 1552-53, 95 L.Ed.2d 39 (1987).

45 *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 138, 111 S.Ct. 478, 112 L.Ed.2d 474 (1990) (quoting *FMC Corp. v. Holliday*, 498 U.S. 52, 58, 111 S.Ct. 403, 407, 112 L.Ed.2d 356 (1990) and *Pilot Life Ins. Co.*, 481 U.S. at 46, 107 S.Ct. 1549) (quoting *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523, 101 S.Ct. 1895, 68 L.Ed.2d 402 (1981)).

46 *Shaw*, 463 U.S. at 97, 103 S.Ct. 2890.

47 *Id.*

This Court previously adopted the expansive interpretation of § 1144(a) announced by the United States Supreme Court in *Ingersoll-Rand,* and has consistently held that if the court's attention must be directed to an ERISA plan, the cause of action then "relates to" the ERISA plan.[48]

Recently, however, ERISA preemption analysis by the United States Supreme Court, as evidenced by *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.,*[49] has signaled a significant retreat from its expansive reading of § 1144(a). The Court in *Travelers* departed from its previous direction in defining the "expansive sweep"[50] of § 1144(a). The Court indicated it was "discarding "uncritical literalism" in favor of the objectives of ERISA "as a guide to the scope of the state law that Congress understood would survive."[51] The Court of Appeals, Division I, has also adopted a narrower reading of ERISA's preemption clause.[52]

While the Court in *Travelers* again noted the expansive scope of the language of the preemption clause, it

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48 *Cutler,* 124 Wash.2d at 763, 881 P.2d 216 (quoting *Ingersoll-Rand*, 498 U.S. at 140, 111 S.Ct. 478); *see also Puget Sound Elec. Workers Health & Welfare Trust Fund v. Merit Co.*, 123 Wash.2d 565, 568-70, 870 P.2d 960 (1994); *Boutillier v. Libby, McNeill & Libby, Inc.,* 42 Wash.App. 699, 713 P.2d 1110, *review denied,* 106 Wash.2d 1005 (1986).

49 514 U.S. 645, 115 S.Ct. 1671, 131 L.Ed.2d 695 (1995).

50 *Pilot Life Ins. Co.,* 481 U.S. at 47, 107 S.Ct. 1549.

51 *Travelers,* 514 U.S. at 656, 115 S.Ct. 1671.

52 *See Kahn v. Salerno,* 90 Wash.App. 110, 951 P.2d 321 (1998); *Ironworkers Dist. Council v. Woodland Park Zoo Planning & Dev.,* 97 Wash.App. 676, 942 P.2d 1054 (1997).

stated, nonetheless, that "[w]e simply must go beyond the unhelpful text and the frustrating difficulty of defining its key term, and look instead to the objectives of the ERISA statute."[53] The basic objective of Congress, the Court concluded, "was to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans."[54] The Court acknowledged its prior decisions have held that ERISA preempted state laws that mandated employee benefit structures or their administration, as well as state laws providing alternative enforcement mechanisms.[55] But the Court did not strike down the state law in that case[56] because, while having some indirect economic impact, the law did not bind employee plan administrators to any particular choice of plan or preclude the uniform provision and administration of plans.[57]

United States Supreme Court decisions following *Travelers*[58] clarified ERISA's preemptive reach to involve the "identi[fication of] the field in which ordinary field pre-emption applies . . . and, . . . ordinary conflict

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53 *Travelers,* 514 U.S. at 656, 115 S.Ct. 1671.

54 *Id.* at 657, 115 S.Ct. 1671.

55 *Id.* at 658, 115 S.Ct. 1671.

56 The New York statute, N.Y. McKinney's Public Health Law § 2807-c, required hospitals to collect surcharges from patients covered by commercial insurers but not those covered by Blue Cross or Blue Shield Plans.

57 *Id.* at 659-60, 115 S.Ct. 1671.

58 *See California Div. of Labor Standards Enforcement v. Dillingham Construction, N.A., Inc.,* 519 U.S. 316, 117 S.Ct. 832, 136 L.Ed.2d 791 (1997); *see also John Hancock Mutual Life Ins. Co. v. Harris Trust & Sav. Bank,* 510 U.S. 86, 99, 114 S.Ct. 517, 126 L.Ed.2d 524 (1993).

pre-emption."[59] In *California Div. of Labor Standards Enforcement v. Dillingham Construction, N.A., Inc.*, the Court relied upon *Travelers* in analyzing a state statute with the "presumption that ERISA did not intent to supplant it."[60] The Court stated that in areas traditionally left to state regulation,[61] and with which ERISA is not expressly concerned, it would be "unsettling" to hold that state law is preempted whenever it has an indirect effect on ERISA plans.[62]

Similarly, the Court in *DeBuono v. NYSA-ILA Med. & Clinical Servs. Fund* concluded that ERISA did not modify the initial presumption against preemption.[63]

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[59] *Dillingham*, 519 U.S. at 336, 117 S.Ct. 832 (Scalia, J., concurring) (emphasis omitted) ("Relate to" is not a test for preemption but simply an identification of the field in which ordinary field preemption applies the field of laws regulating employee benefit plans).

[60] *Id.* at 331-32, 117 S.Ct. 832. (The Court upheld a law prohibiting payment of lower wages to apprentices trained in unapproved programs)

[61] Stating an "assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Id.* at 325, 117 S.Ct. 832 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 1152, 91 L.Ed.2d 1447 (1947)); *see also Gade v. National Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98, 112 S.Ct. 2374, 2383, 120 L.Ed.2d 73 (1992) (State Law is preempted by ERISA where it is "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress").

[62] *Dillingham*, 519 U.S. at 330-31, 117 S.Ct. 832.

[63] 520 U.S. 806, 117 S.Ct. 1747, 138 L.Ed.2d 21 (1997)

The Court observed that the statute in that case[64] neither prohibited a method of calculating benefits that federal law permitted nor required employers to provide certain benefits. The case was not one in which the existence of a pension plan was critical to the state law cause of action or in which the state statute expressly referred to ERISA plans.[65] The Court noted that in past decisions describing the expansive nature of the preemption, it had not been necessary to rely on that expansive character in finding preemption because the state laws at issue had a clear connection with or reference to ERISA plans.[66]

The effect of *Travelers* and its progeny favors a retreat from the expansive preemption doctrine this Court has previously followed to ensure ERISA's objective of protecting workers and Washington's sovereign interest in exercising its traditional police powers in the area of domestic relations and family law.

LIFE INSURANCE PROCEEDS

The Court of Appeals decided the issue of entitlement to Decedent David A. Egelhoff's life insurance proceeds by reference to statutes and case law,[67] but did not consider whether decedent's life insurance plan is a

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[64] *DeBuono*, 520 U.S. at 809, 117 S.Ct. 1747 (The statute, N.Y. McKinney's Public Health Law § 2807-d, imposed a tax on a medical center operated with ERISA funds).

[65] *Id.* at 814-15, 117 S.Ct. 1747.

[66] *Id.* at 813, 117 S.Ct. 1747.

[67] *Egelhoff*, 93 Wash.App. at 320-21, 968 P.2d 924. The Court of Appeals relied upon the Uniform Simultaneous Death Act (USDA), chapter 11.05 RCW, and RCW 48.18.390 (beneficiary treated as having predeceased policyholder, leaving life insurance proceeds to the policyholder's estate) and case law (statutory heirs inherit the life insurance policy proceeds when policyholder dies intestate).

"welfare benefit plan" or a "pension benefit plan."[68] Petitioner asserts ERISA preempts RCW 11.07.010 as it relates to decedent's life insurance plan and his pension plan. Respondents argue to the contrary that the United States Supreme Court made a distinction between "welfare" and "pension" plans, finding that Congress elected to regulate pension benefit plans more rigorously than welfare plans.[69] Respondents conclude that consequently decedent's life insurance plan is a "welfare benefit plan" and not subject to ERISA preemption under its antialienation and preemption provisions. According to Respondents, RCW 11.07.010 would control and invalidate Petitioner Donna Rae Egelhoff's designation as beneficiary under Decedent David A. Egelhoff's life insurance plan. Respondents assert they were properly awarded the proceeds of their father's life insurance by the Court of Appeals.

Amicus Curiae Secretary of Labor[70] states that ERISA's antialienation provision, 29 U.S.C. § 1056(d), only involves "pension" plans and does not involve

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68 *See* Br. of Appellant, Court of Appeals, Division II, at 34-36; *see* 29 U.S.C. § 1002(3) which states [t]he term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan . . . ".

69 *Id.* at 35 (citing *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 829, 108 S.Ct. 2182, 100 L.Ed.2d 836 (1988); *Equitable Life Assurance Society of the U.S. v. Crysler*, 66 F.3d 944 (8th Cir. 1995).

70 Briefs Amicus Curiae were filed in support of Appellant Donna Rae Egelhoff's petition for review by the Secretary of Labor; the Boeing Company; the Boeing Company Employee Benefit Plans Committee; Puget Sound Energy, Inc.; Safeco Corporation; Weyerhaeuser Company; the Sheet Metal Workers' National Pension Fund; and the Washington State Trial Lawyers Association.

"welfare" plans.[71] A review of the ERISA statute supports this conclusion.[72] Under ERISA a "pension" plan must include provisions prohibiting the alienation of "pension" benefits, but "welfare" plan benefits are exempt from this requirement. We follow the reasoning of the United States Supreme Court in *Mackey v. Lanier Collection Agency & Serv., Inc.*[73] and conclude that Respondents, the children of Decedent David A. Egelhoff, are entitled to the proceeds of his employment-based life insurance policy.

PENSION PLAN PROCEEDS

The interpretation of "field preemption" and "conflict preemption" clarified in *Travelers* is pivotal to any discussion of ERISA preemption. In determining the scope of the "field" occupied by ERISA, federal laws will not preempt state statutes in areas that are "remote from the areas with which ERISA is expressly concerned—'reporting, disclosure, fiduciary responsibility,

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71 Amicus Br. of the Secretary of Labor 11.

72 The antialienation provision of ERISA, 29 U.S.C. § 1056(d)(1), states "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1051(1) "appl[ies] to any employee benefit . . . other than—(1) an employee welfare benefit plan[.]" Under 29 U.S.C. § 1002(1) is "[t]he terms 'employee welfare benefit plan' and 'welfare plan' mean any plan, fund, or program . . . established or . . . maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment. . . ."

73 486 U.S. 825, 108 S.Ct. 2182, 100 L.Ed.2d 836 (1988).

and the like.'"[74] Preemption analysis requires consideration of the objectives of Congress in enacting ERISA—the promotion of employee interests and the protection of those interests against mismanagement by plan administrators.[75] Effectuating the areas of ERISA's primary concern leaves to the States the duty to regulate local matters even when such regulation has an indirect impact upon or slight connection with ERISA plans.[76] The United States Court of Appeals for the Ninth Circuit observed in *Emard v. Hughes Aircraft Co.*[77] that "ERISA's preemption clause no longer has the power to transmute into a federal question every issue that brushes against the periphery of an ERISA plan."[78] The use of a federal statute to forbid state regulation in "areas where ERISA has nothing to say"[79] would unjustly restrain the legitimate exercise of the states' historic police powers[80] without achieving the objectives sought by Congress.

Petitioner Donna Rae Egelhoff and amici curiae[81] assert that RCW 11.07.010 does not apply to ERISA plans. This is not correct. The fact is that the statute

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[74] *Dillingham,* 519 U.S. at 330, 117 S.Ct. 832 (quoting *Travelers,* 514 U.S. at 661, 115 S.Ct. 1671).

[75] *Massachusetts v. Morash,* 490 U.S. 107, 114, 109 S.Ct. 1668, 104 L.Ed.2d 98 (1989).

[76] *See Travelers,* 514 U.S. at 661-62, 115 S.Ct. 1671.

[77] 153 F.3d 949 (9th Cir. 1998), *cert. denied,* -- U.S. --, 119 S.Ct. 903, 142 L.Ed.2d 902 (1999).

[78] *Emard,* 153 F.3d at 961.

[79] *Dillingham*, 519 U.S. at 330, 117 S.Ct. 832.

[80] *Rice*, 331 U.S. at 230, 67 S.Ct. 1146.

[81] Amicus Curiae Washington State Trial Lawyers Association does not join in these assertions.

may apply to ERISA plans. The question is whether it is preempted by ERISA. RCW 11.07.010 involves an area of domestic and family that has long been the traditional domain of the states.[82] In areas involving traditional state regulation, "the starting presumption [is] that Congress does not intend to supplant state law."[83] Petitioner has the considerable burden of overcoming this presumption.[84]

A state law "relates to" an ERISA plan if it either "refers to" or has a "connection with" such a plan.[85] Under the first part of this inquiry, "reference to" an ERISA plan means the state law must act "immediately and exclusively" upon the ERISA plans,[86] or alternatively, the existence of ERISA plans which are "essential to the law's operation."[87] It is not sufficient that the statutory definition of nonprobate assets under RCW 11.07.010(5)(a) merely mentions an "employee benefit

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[82] *Boggs v. Boggs*, 520 U.S. 833, 840, 117 S.Ct. 1754, 138 L.Ed.2d 45 (1997); *See Hisquierdo v. Hisquierdo,* 439 U.S. 572, 581, 99 S.Ct. 802, 808, 59 L.Ed.2d 1 (1979); *see also Rose v. Rose,* 481 U.S. 619, 107 S.Ct. 2029, 95 L.Ed.2d 599 (1987).

[83] *Travelers*, 514 U.S. at 654-55, 115 S.Ct. 1671.

[84] *DeBuono,* 520 U.S. at 814, 117 S.Ct. 1747.

[85] *Shaw,* 463 U.S. at 96-97, 103 S.Ct. 2890.

[86] *Mackey,* 486 U.S. at 830, 108 S.Ct. 2182 (A Georgia anti-garnishment statute which applied solely to ERISA pension plans had a sufficient "reference to" ERISA plans, while a garnishment statute, general in scope, which applied to both ERISA and non-ERISA plans did not).

[87] *Dillingham,* 519 U.S. at 325, 117 S.Ct. 832.

plan."[88] The statute does not apply immediately and exclusively to an ERISA plan, nor is the existence of such a plan essential to operation of the statute.[89]

This Court must address whether RCW 11.07.010 has a sufficient "connection with'" an ERISA plan to compel preemption analysis." Generally, a state law has a connection with an ERISA plan if it mandates plan benefit structures[90] or some aspect of their administration.[91] In these situations requiring conflict preemption analysis,[92] a state law which directly or indirectly invades the core functions of ERISA regulation must give way to the comprehensive federal scheme favored by Congress under the four-factor approach of the Court of Appeals for the Ninth Circuit.[93]

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[88] As in *Dillingham*, the Court rejected the argument that mention of "joint apprenticeship committee" related to ERISA plans where approved class of apprenticeship sponsors also included non-ERISA plans.

[89] *See Emard*, 153 F.3d at 954.

[90] *See Shaw*, 463 U.S. at 97, 103 S.Ct. 2890 (ERISA preempted New York laws prohibiting employers from structuring benefit plans in a way that discriminated on the basis of pregnancy, and mandated payment of other specific benefits).

[91] *Travelers*, 514 U.S. at 657-58, 115 S.Ct. 1671.

[92] Conflict preemption analysis requires a two-step inquiry to determine (1) whether the state law at issue conflicted with any specific provision of ERISA and (2) whether application of the state law would frustrate Congress' purpose in enacting ERISA. *See Emard*, 153 F.3d at 957-59.

[93] The United States Court of Appeals for the Ninth Circuit in *Aloha Airlines, Inv. v. Ahue*, 12 F.3d 1498, 1504 (9th Cir. 1993), identified four-factors to determine whether a state law has a "connection with" an ERISA benefit plan: "(1) whether the state law regulates the types of benefits of ER-

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However, the mere fact that RCW 11.07.010 may operate upon the beneficiary designation in an ERISA plan is not of itself a sufficient connection to require preemption. The statute operates under the legal fiction that "the former spouse [did not] survive the decedent, having died at the time of entry of the decree of dissolution. . . ."[94] Benefits under the plan remain to be distributed in accord with the plan documents under ERISA.[95] While a state statute such as RCW 11.07.010 may bring the default distribution provisions into effect, it does not alter the nature of the plan itself, the administrator's fiduciary duties, or the requirements for plan administration. The Washington Court of Appeals concluded in this case that the effect of RCW 11.07.010 upon an ERISA plan is "'too slight to overcome the pre-

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ISA employee welfare benefit plans . . .; (2) whether the state law requires the establishment of a separate employee benefit plan to comply with the law . . .; (3) whether the state law imposes reporting, disclosure, funding, or vesting requirements for ERISA plans . . .; and (4) whether the state law regulates certain ERISA relationships, including the relationships between an ERISA plan and employer and, to the extent an employee benefit plan is involved, between the employer and employee." *Id.* at 958 (citations omitted).

[94] RCW 11.07.010(2)(a).

[95] 29 U.S.C. § 1104(a)(1)(D) provides in pertinent part that "(1) . . . a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—(A) for the exclusive purpose of: . . . (D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter. . . ."

sumption against preemption of state family and family property law.'"[96] We agree.

The Ninth Circuit ERISA preemption analysis currently represents a minority view among other United States Circuit Courts,[97] that Court in *Emard* concluding that California law did not affect the administration of ERISA plans but "merely the ultimate ownership of distributed benefits."[98] We find that decision at least persuasive in interpreting the impact of RCW 11.07.010 in this case.

Amicus Curiae Boeing claims a "connection" exists because requiring plan administrators to investigate the marital status of beneficiaries and to determine whether a beneficiary designation remains valid under state law increases the administrative burdens on the plan, with resultant increase of costs and depletion of plan resources available for benefits to employees.[99] Similar arguments have been rejected by the United States Supreme Court.[100] Our interpretation of field preemption

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96 *Egelhoff*, Wash.App. at 326, 968 P.2d 924 (quoting *Emard*, 153 F.3d at 959).

97 *See Metropolitan Life Ins. Co. v. Petit*, 164 F.3d 857 (4th Cir. 1998); *Mattei v. Mattei*, 126 F.3d 794 (6th Cir. 1997), *cert. denied*, -- U.S. --, 118 S.Ct. 1799, 140 L.Ed.2d 939 (1998); *Brandon v. Travelers Ins. Co.*, 18 F.3d 1321 (5th Cir. 1994); *Krishna v. Colgate Palmolive Co.*, 7 F.3d 11 (2d Cir. 1993); *Metropolitan Life Ins. Co. v. Hanslip*, 939 F.2d 904 (10th Cir. 1991); *MacLean v. Ford Motor Co.*, 831 F.2d 723 (7th Cir. 1987).

98 *Emard*, 153 F.3d at 959.

99 *See* Br. of Amici Curiae Boeing Co. et al. at 6-11.

100 *See Travelers*, 514 U.S. at 659-61, 115 S.Ct. 1671 (Preemption rejected based on indirect economic influence on plan administration). *DeBuono*, 520 U.S. at 815-17, 117

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under *Travelers*[101] leads us to the conclusion that RCW 11.07.010 does not "relate to" or have a "connection with" such a plan.

Petitioner and supporting amici rely upon the amendments to ERISA in the antialienation provision, 29 U.S.C. § 1056(d)(1),[102] to support their claim that

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S.Ct. 1747. (Direct tax reducing fund assets that would otherwise be available to provide plan members with benefits was not sufficiently connected to ERISA plans to require preemption. "Any state tax, or other law, that increases the cost of providing benefits to covered employees will have some effect on the administration of ERISA plans, but that simply cannot mean that every state law with such an effect is pre-empted by the federal statute.").

101 The Court in *Travelers* recognized the possibility that "a state law might produce such acute, albeit indirect, economic effects, by intent or otherwise, as to force an ERISA plan to adopt a certain scheme of substantive coverage or effectively restrict its choice of insurers, and that such a state law might indeed be pre-empted." *Id.* at 668, 115 S.Ct. 1671. As stated by the Court of Appeals and argued by the Respondents, such "major damage" to ERISA's objectives cannot be shown because of RCW 11.07.010. *Egelhoff*, 93 Wash.App. at 326, 968 P.2d 924 (quoting *Hisquierdo*, 439 U.S. at 581, 99 S.Ct. 802); *see* Supplemental Br. of Resp'ts at 2-6, 15; *see* Amicus Br. of the Wash. State Trial Lawyers Ass'n at 12.

102 29 U.S.C. § 1056(d)(1) states that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d)(3)(A) "appl[ies] to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a "qualified domestic relations order." *See* 29 U.S.C. § 1056(d)(3)(B)(i) (defining a "qualified domestic relations order"). In general, the antialienation provision restricts diversion of plan bene-

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under *Boggs v. Boggs*[103] a direct conflict exists between RCW 11.07.010 and 29 U.S.C. § 1056(d)(1).[104] This assertion mischaracterizes the "field preemption" analysis under *Travelers*.

The United States Supreme Court in *Boggs* determined "conflict preemption" may defeat application of the state law, without considering whether it "relates to" an ERISA plan, if the relevant law conflicts with a specific ERISA provision.[105] The Louisiana law in that case allowed a plan beneficiary to bequeath the beneficiary's equitable interest in benefit plan proceeds to a third party through the beneficiary's will.[106] This was in direct contravention of the antialienation provision requiring that proceeds be distributed solely in accordance with the plan documents or the terms of a limited

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fits to someone other than a payee under the plan documents, unless executed in a specified manner to be recognized as a "qualified domestic relations order" (QDRO). *See* 29 U.S.C. § 1056(d)(3)(A). ERISA provides a limited exception to the anti-alienation provision for QRDO's. This provision, enacted as part of the REA amendments, is intended to protect spouses and dependents of employees who participate in ERISA benefit plans. *See Boggs*, 520 U.S. at 846-48, 117 S.Ct. 1754.

103 520 U.S. 833, 117 S.Ct. 1754, 138 L.Ed.2d 45 (1997).

104 Pet. for Review at 16-17; Secretary of Labor Amicus Br. at 5-11; Boeing Co., et al. Amicus Br. at 4-6.

105 *Boggs,* 520 U.S. at 841, 117 S.Ct. 1754.

106 *Id.* at 836, 117 S.Ct. 1754. (An "alternate payee" under a QDRO is considered a plan "beneficiary." 29 U.S.C. § 1056(d)(3)(J)).

statutory exception, such as the "qualified domestic relations order" (QDRO) exception.[107]

RCW 11.07.010 does not conflict with ERISA's antialienation provision because it does not operate to divert benefit plan proceeds from distribution under terms of the plan documents.[108] *Amicus* Secretary of Labor states that RCW 11.07.010 is [l]ike the community property in *Boggs*.[109] That is not correct. The statute in that case directed disposition of the proceeds of a benefit plan, and allowed plan beneficiaries to dispose of their share of the proceeds to alternate payees by testamentary transfer.[110] The United States Supreme Court concluded the transfer was in violation of the antialienation provision, which does not recognize state law mechanisms for distributing plan proceeds to a third party except under certain specific exceptions, such as when a former spouse receives benefits of a plan under the terms of a QDRO.[111]

RCW 11.07.010 does not require distribution of benefit plan assets to a third party, nor does it in any way direct payment of proceeds. It merely invalidates designation of a former spouse as beneficiary of a non-

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107 *Id.* at 846-51, 117 S.Ct. 1754; *see also Ablamis v. Roper,* 937 F.2d 1450 (9th Cir. 1991). (California community property law providing for testamentary transfers to third party of plan beneficiary's equitable share in ERISA pension plan directly conflicted with anti-alienation provision).

108 *See* Amicus Br. of the Wash. State Trial Lawyers Ass'n at 14.

109 Amicus Br. of the Secretary of Labor at 10.

110 *Boggs,* 520 U.S. at 836-37, 117 S.Ct. 1754.

111 *Id.* at 851-52, 117 S.Ct. 1754 (Testamentary transfer under state law condemned as a diversion of retirement benefits in violation of ERISA).

probate asset by creating the legal fiction that the spouse predeceased the now-deceased owner.[112] While the underlying circumstances to which the distribution scheme of an ERISA plan must be applied is altered, the plan administrator is not required to follow provisions for distributing the proceeds other than those in the plan. There is no diversion of plan benefits.[113] Under federal preemption analysis, we conclude that the nexus between participant and beneficiary in this case in not compromised.[114]

Despite the reality of her survival under RCW 11.07.010 Petitioner Donna Rae Egelhoff is legally considered to have predeceased the plan participant, Decedent David A. Egelhoff, with the result that there is no valid beneficiary designated in the plan. Without reliance upon any state distribution scheme, his children and heirs, Respondents, would receive his pension plan benefits. The resulting statutorily effected change in the underlying circumstances for administration of the plan does not impede the plan administrator's obligation to pay under the terms of the plan documents. There is no conflict with the specific ERISA provision proscribing alienation of benefits. We conclude that RCW 11.07.010 is not preempted by ERISA. This statute, involving domestic relations and family law, is an area of law historically left to state control. RCW 11.07.010 does not "refer to" or have a significant "connection with" an ERISA plan to require preemption. Nor does RCW 11.07.010 conflict with any specific ERISA provision, including the antialienation clause under 29 U.S.C. § 1056(d)(1). Under this reasoning, we conclude that

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[112] RCW 11.07.010(2)(a).

[113] *Boggs,* 520 U.S. at 851-52, 117 S.Ct. 1754.

[114] *Id.*

Petitioner Donna Rae Egelhoff is not entitled to benefits under her deceased former husband's pension plan. We need not address the question of waiver under the property settlement incorporated in the dissolution.

SUMMARY AND CONCLUSIONS

Petitioner Donna Rae Egelhoff's claims for benefits under Decedent David A. Egelhoff's employment-based life insurance and pension plans were properly denied by the Court of Appeals, Division II.

Recent United States Supreme Court cases following *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.* lead to the conclusion that the Court's former commitment to an expansive interpretation of ERISA's preemptive scope is yielding to a narrowed view of the field occupied by this statutory scheme. The effect of *Travelers* and cases following justify retreat from the expansive preemption doctrine our Court has previously followed to ensure ERISA's objective of protecting workers and Washington's sovereign interest in exercising its traditional police powers in the area of domestic relations and family law.

Respondents' conclusion that the decedent's life insurance plan is a "welfare benefit plan" and not subject to ERISA preemption under its antialienation and preemption provisions has merit. RCW 11.07.010 invalidates Petitioner Donna Rae Egelhoff's designation as beneficiary under Decedent David A. Egelhoff's life insurance plan because she is by legal fiction considered to have died at the time their decree of dissolution was entered. Respondents were properly awarded the proceeds of their father's life insurance by the Court of Appeals.

Under the interpretation of "field preemption" and "conflict preemption" clarified in *Travelers*, RCW 11.07.010 does not "relate to" an ERISA plan. This statute neither "refers to" nor has sufficient "connection with" an ERISA plan to justify preemption. Nor is

RCW 11.07.010 directly in conflict with any specific provision of ERISA, including the antialienation provision under 29 U.S.C. § 1056(d)(1). Respondents were properly awarded the benefits under their father's pension plan.

We affirm the decision of the Court of Appeals, Division II, which reversed the orders of summary judgment of the Pierce County Superior Court, and conclude that Respondents Samantha Egelhoff and David A. Egelhoff, Jr., the children and heirs of Decedent David A. Egelhoff, are entitled to receive the benefits under their father's pension plan and the proceeds of his life insurance.

GUY, C.J., JOHNSON, MADSEN, ALEXANDER, TALMADGE, IRELAND, SANDERS, JJ., AND COLEMAN, J.P.T., concur.

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

IN THE MATTER OF THE ESTATE OF DAVID A. EGELHOFF, DECEASED. SAMANTHA EGELHOFF, a minor by and through her natural parent KATE BREINER; and DAVID EGELHOFF, a single person, Appellants, v. DONNA RAE EGELHOFF AND "JOHN DOE" EGELHOFF, wife and husband, Respondents	No. 22293-1-II No. 22562-0-II (consolidated) PUBLISHED OPINION Filed: December 23, 1998

Hunt, J. – Decedent David Egelhoff's children from his first marriage appeal the grant of summary judgment to his second wife, Donna Egelhoff.[1] The trial court awarded to Donna, the named beneficiary, the proceeds of David's employer—provided life insurance and his pension plan benefits, even though she and David had dissolved their marriage more than two months before his death. The trial court reasoned that ERISA[2] preempted state law, which otherwise could operate automatically to redesignate beneficiaries upon dissolution

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[1] For ease of reference we refer to the parties by their first names; we mean no disrespect.

[2] Employee Retirement Income Security Act, 29 U.S.C. 1001, et seq.

of a marriage. Holding that ERISA does not preempt the state law in question and that Donna was not entitled to the insurance proceeds or pension funds, we reverse.

FACTS

David and Donna Egelhoff married on November 4, 1988; they separated on October 1, 1993. During their marriage, David had named Donna as the beneficiary of his life insurance policy and his pension plan, both provided by his employer, the Boeing Company. The decree of dissolution was entered on April 22, 1994. As part of the property settlement distribution, David was awarded "100% of his Boeing retirement 401K[3] and IRA[4]."

On June 23, 1994, David was involved in a serious car accident. On July 8, 1994, he died from his injuries. Donna was still listed as the beneficiary of both David's insurance policy and his pension plan. David died intestate.

David's statutory heirs,[5] his children from his first marriage, filed suit, alleging that under the dissolution

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3 Defined by 26 U.S.C. § 401(k)

4 Defined by 26 U.S.C. § 408(a).

5 RCW 11.04.015 provides that:

> The net estate of a person dying intestate . . . shall be distributed as follows:
>
> . . .
>
> (2) Shares of others than surviving spouse. The share of the net estate not distributable to the surviving spouse, or the entire net estate if there is no surviving spouse, shall descend and be distributed as follows: To the issue of the intestate; if they are all in the same degree of kinship to the estate, they shall take equally, or if of unequal degree, then those of more remote degree shall take by representation.

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decree's property distribution settlement, Donna had waived her rights to the pension plan. After Donna received the insurance proceeds, the children filed a conversion action, alleging that Washington law, specifically RCW 11.07.010, had operated to remove her as the beneficiary of the insurance policy.

The trial court entered summary judgment for Donna as to both benefits. The trial court ordered that the insurance policy be "administered in accordance with the Employee Retirement Income Security Act and the designated beneficiary, Donna Rae Egelhoff shall have all legal rights to the proceeds which have been paid thereto."[6] The trial court similarly ordered that the pension plan should be "administered in accordance with the Employ[ee] Retirement Income Security Act of 1974 ("ERISA") and that the designated beneficiary, Donna Rae Egelhoff shall have all legal rights thereto[.]" The trial court stayed the order for summary judgment with regard to the pension plan proceeds, directing that they not be distributed to any party pending the outcome of this appeal. As noted above, the insurance proceeds had already been distributed to Donna before the litigation commenced.

The children timely appealed and we consolidated the appeals.[7]

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> gree, then those of more remote degree shall take by representation.

6 The trial court apparently disregarded an affidavit from the children's mother, David's first wife, attesting to Donna's statements that she knew David had intended to remove her as beneficiary of his life insurance policy and would be angry if he knew Donna had received the proceeds.

7 Because we hold that RCW 11.07.010 is not preempted by ERISA, we need not to address the children's alternative

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ANALYSIS

1. STANDARD OF REVIEW

When reviewing a trial court's order of summary judgment, we engage in the same inquiry as the trial court. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See* CR 56(dc), *Mutual of Enumclaw Inc. Co. v. Jerome*, 122 Wn.2d 157, 160, 856 P.2d 1095 (1993). Summary judgment should be granted only if reasonable persons could reach but one conclusion, after considering the evidence in the light most favorable to the non-moving party. *Reynolds v. Hicks*, 134 Wn.2d 491, 495, 951 P.2d 761 (1998).

II. FEDERAL LAW

The pension plan and insurance policy at issue in this case fall under ERISA because they were provided by David's employer, the Boeing Company. ERISA regulates all employee benefits plans sponsored by an employer or an employee organization. *Cutler v. Phillips Petroleum Co.*, 124 Wn.2d 749, 756, 881 .2d 216 (1994).

III. STATE LAW

The children rely on RCW 11.07.010 to support their claim that they, and not Donna, should receive both the proceeds of the pension plan and the insurance policy.

RCW 11.07.010 provides:

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assertion that Donna "waived" her right to the pension proceeds via the dissolution decree.

Nonprobate assets on dissolution or invalidation of marriage
(1) This section applies to all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state of a decree of dissolution of marriage or a declaration of invalidity.

(2)(a) *If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked.* A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity.

. . .

(5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than a decedent's will:

(a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account[.]

(Emphasis added)

Donna argues that ERISA preempts RCW 11.07.010. If not preempted by ERISA, this statute would operate to revoke Donna's status as beneficiary upon dissolution of her marriage to David. This would leave no beneficiary listed on either the life insurance or

pension plan. As a result, under the terms of the pension plan, the children would receive David's pension benefits.[8]

With regard to the life insurance plan, RCW 48.24.160, which governs beneficiaries under group life insurance plans, seems to indicate that every plan should contain a designation of how benefits will be paid should no beneficiary be listed at the time of decedent's death.[9] But the life insurance plan in this case contains no such designation. Because there are no relevant reported cases interpreting RCW 11.07.010, an analogy to the Uniform Simultaneous Death Act (USDA) is helpful: Both the USDA and RCW 11.07.010 operate, under certain circumstances, to treat the holder of life insurance as surviving the beneficiary as a matter of law. Under the USDA, where the beneficiary is treated as having predeceased the policyholder, the proceeds of a life insurance policy belong to the policyholder's estate, RCW 11.05.040, unless the insurance plan designates an alternate procedure for determining a beneficiary. RCW 48.18.390. Where such a policyholder has left no will, his statutory heirs inherit the proceeds. *In re Saunders' Estates*, 51 Wn.2d 274, 276, 317 P.2d 528 (1957) *In re*

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8 "If you have not designated a beneficiary on the appropriate form, you have an invalid beneficiary designation, or your beneficiary is no longer living, benefits will be paid in the following sequence:

1. To your surviving spouse.
2. If there is no surviving spouse, to your children in equal shares."

9 "There shall be a provision that any sum becoming due by reason of the death of the individual insured shall be payable to the beneficiary designated by such individual, subject to the provisions of the policy in the event there is no designated beneficiary. . ." RCW 48.24.160.

Clise's Estates, 64 Wn.2d 320, 321, 391 P.2d 547 (1964).

Similarly, under RCW 11.07.010, we treat David as having survived Donna for purposes of distributing life insurance proceeds. As a result, the life insurance proceeds should have been paid first to David's estate and then to his children (as his statutory heirs) as part of his estate. Thus, under RCW 11.07.010, the children, and not Donna, were entitled to both the insurance proceeds an the pension benefits.

IV. PREEMPTION

ERISA preempts state laws that "relate to" employee benefits plans.[10] We construe this phrase in accordance with Congress' intent in enacting ERISA – to provide uniformity in the administration of benefit programs. *Fort Halifax Packing Co., Inc. v. Coyne*, 482 U.S. 1, 11, 107 S. Ct. 2211, 96 L.Ed.2d 1 (1987). If state law affects ERISA-covered plans in "too tenuous, remote, or peripheral a manner," the state law does not "relate[] to" the plan and is therefore not preempted. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 100 n. 21, 103 S. Ct. 2890, 77 L.Ed.2d 490 (1983).

The Supreme Court has recently[11] suggested that ERISA preemption should be limited with regard to ar-

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10 29 U.S.C. 1144(a) provides, in relevant part, that:

> Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title.

11 Earlier, the Supreme Court had interpreted ERISA's preemption statue as creating a "deliberately expansive" pre-

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eas traditionally left to state regulation. *See De Buono v. NYSA-ILA Medical and Clinical Svcs. Fund*, 520 U.S. 806, 117 S. Ct. 1747, 1751, 138 L.Ed.2d (1997). Courts "must go beyond the unhelpful text and the frustrating difficulty of defining its key term ['related to'], and look instead to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive." *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 646, 656, 115 S. Ct. 1671, 131 L.Ed.2d 695 (1995).

Washington courts have also noted this change in the focus of ERISA preemption analysis. Division One has indicated that preemption is appropriate if it advances "ERISA's goal of providing uniform resolution of disputes for which an ERISA remedy [is] available." *Behavioral Sciences Institute v. Great-West Life*, 84 Wn. App. 863, 871-72, 930 P.2d 933 (1997).

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emption of state law. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 46, 107 S. Ct. 1549, 95 L.Ed.2d 39 (1987). In *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 139, 111 S. Ct. 478, 112 L.Ed.2d 474 (1990), the Court ruled that "a state law may 'relate to' a benefit plan, and thereby be pre-empted, even if the law is not specifically designed to affect such plans, or the effect is only indirect." The Washington Supreme Court's traditional analysis of ERISA "preemption" is illustrated by *Cutler*, 124 Wn2d at 763, in which it relied primarily on *Ingersoll-Rand's* holding that employees' state law claims were preempted when they directly conflicted with an ERISA cause of action or rested upon the existence of an ERISA plan. *Ingersoll-Rand*, 498 U.S. at 140. As recently as 1996, the Washington Supreme Court indicated that ERISA "preempts any state law touching on ERISA benefit plans, even if those laws merely supplemented the Act and were consistent in purpose." *Stevedoring Svcs. Of America, Inc. v. Eggert*, 129 Wn.2d 17, 26, 914 P.2d 737 (1996).

> Rather than basing preemption on the mention of an ERISA plan in the complaint, we choose to apply a holistic approach to ERISA preemption emphasizing congressional intent and the purpose of ERISA.

Behavioral Sciences, 84 Wn. App. at 872. Division One has also ruled, "[W]e presume that ERISA does *not* supercede the historic police powers of the states unless that was the clear and manifest purpose of Congress." *Kahn v. Salerno*, 90 Wn. App. 110, 133, 951 P.2d 321 (1998).

Following Division One, we "begin our analysis with the presumption that ERISA does not preempt" the state law in question here – that spouses named as insurance and pension beneficiaries automatically lose such designation upon dissolution of marriage. *Kahn*, 90 Wn. App. At 134; *See also California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 325, 117 S. Ct. 832, 136 L.Ed.2d 791 (1997). "Thus, the burden is on the party arguing for preemption to show, as a matter of law, that it was the clear and manifest purpose of Congress to supersede this type of . . . claim. *Kahn*, 90 Wn. App. At 134.

The most comprehensive summary of the current state of ERISA preemption law is *Emard v. Hughes Aircraft Co.*, 155 F.3d 949, 953 (9th Cir. 1998) (citing *Tounajian v. Frailey*, 135 F.3d 648, 654 n. 3 (9th Cir. 1998)), in which the Ninth Circuit noted that "[r[ecently, the scope of this broad 'relate to' preemption was markedly narrowed." The *Emard* court ruled:

> To guide our preemption analysis within the specific context of ERISA, we ask whether the state law at issue has (1) a "reference to" or (2) a "connection with" an ERISA plan.

Emard, 153 F.3d at 954.

A state law has "reference to" an ERISA plan where it "acts immediately and exclusively upon ERISA plans, . . . or where the existence of ERISA plans is essential to the law's operation." *Dillingham*, 519 U.S. at 325. RCW 11.07.010 does not act "immediately and exclusively upon ERISA plans," nor is the existence of ERISA plans "essential to the law's operation." Consequently, RCW 11.07.010 does not have a "reference to" ERISA plans and is preempted only if it has a "connection with" ERISA benefit plans.

The *Emard* court considered four factors in determining whether the California statute at issue had a "connection with" ERISA "such that application of the state law would frustrate ERISA's purposes":

> (1) whether the state law regulates the types of benefits of ERISA employee welfare benefit plans;
> (2) whether the state law requires the establishment of a separate employee benefit plan to comply with the law;
> (3) whether the state law imposes reporting, disclosure, funding, or vesting requirements for ERISA plans; and
> (4) whether the state law regulates certain ERISA relationships, including the relationships between an ERISA plan and employer and, to the extent an employee benefit plan is involved, between the employer and employee.

Emard, 153 F.3d at 958 (quoting *Operating Engineers Health and Welfare Trust Fund v. JWJ Contracting Co.*, 135 F.3d 671, 678 (9th Cir 1998)). The *Emard* court determined that the first three factors were not at issue and then rejected the contention that the California statute violated the fourth factor "by altering the administrative process for plans in California and by altering the designation of beneficiaries." *Emard*, 153 F.3d at 958.

Although ERISA preempts state laws affecting the *administration* of employee plans, RCW 11.07.010, like the California statute at issue in *Emard*, "does not affect the administration of plans; instead, it affects merely the ultimate ownership of distributed benefits." *Emard*, 153 F.3d at 959. As with the California statute at issue in *Emard*, under RCW 11.07.010,

> an ERISA administrator may pay insurance to the named beneficiary unless a contending claimant properly notifies the plan of his or her claim to the proceeds. In the absence of such a claim, payment to the named beneficiary absolves the plan of liability for further claims. California law therefore does not alter plan administration.

Emard, 153 F.2d at 959 (citation omitted). But if a "contending claim is made before disbursement, the administrator can leave the determination of the proper recipient of the proceeds to the parties through application of state property law[.]"[12]

The court also noted that:

> [u]nder the majority approach of [previous] opinions [concerning ERISA preemption], application of California law concerning the designation of a beneficiary, has a connection with ERISA and would therefore be preempted. Those opinions, though, rely on the Supreme Court's former approach to ERISA preemption, and their analyses therefore pro-

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[12] The *Emard* court did not address the situation where a competing claim was made for insurance proceeds *after* the proceeds had already been distributed to the named beneficiary. It is an issue in this case, but RCW 11.07.010 provides resolution.

> vide us little guidance. Applying the preemption approach required by the Court's recent cases, we hold that ERISA does not preempt California's law of community property in this instance.

Emard, 153 F.3d at 956-57. The court saw "no indication that Congress intended to safeguard an individual beneficiary's rights to the proceeds of an ERISA insurance plan as against another person claiming superior rights, under state law, to those proceeds." *Emard*, 153 F.3d at 958. The court also recognized that

> in the circumstances of a case such as this, the plan administrator must take certain steps to answer the complaint and either disburse the disputed funds to the prevailing claimant or deposit the funds with the court. But this burden on the administrator is too slight to overcome the presumption against preemption of state family and family property law.

Emard, 153 F.3d at 959 (citing *Boggs v. Boggs*, 520 U.S. 833, 117 S. Ct. 1754, 1760, 138 L.Ed.2d 45 (1997); *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 581, 99 S. Ct. 802, 59 L.Ed.2d 1 (1979)).[13]

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[13] Furthermore, as other courts have noted, "[b]lindly paying the proceeds as specified in the [plan documents] would be inconsistent with the statutory preemption exception that recognizes the validity of domestic relations orders affecting beneficiary designations." *See, e.g., Carland v. Metropolitan Life Ins. Co.*, 935 F.2d 1114, 1121 (10th Cir. 1991). Similarly, contrary to Donna's assertions here, holding that RCW 11.07.010 is not preempted will not complicate the administration of ERISA-covered plans in Washington. "ERISA already requires an administrator of a pension plan to investigate the marital history of a participant and determine whether a domestic relations order exists that could affect the

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As the final step of preemption analysis, the *Emard* court noted that Congress has not completely occupied this field such that state laws are preempted. *Emard*, 153 F.3d at 960-61 (citing *Boggs*, 117 S. Ct. at 1760). "Congress pre-empted state laws relating to *plans*, rather than simply to *benefits*." *Coyne*, 482 U.S. at 11.

Because California's law does not regulate ERISA plans (other than operating to redesignate the beneficiary), the *Emard* court found that ERISA did not bar application of state law. *Emard*, 153 F.2d at 961. The Ninth Circuit believed that "Congress did not preempt state rules" with regard to alternate distribution of insurance proceeds: "State community property laws 'implement policies and values lying within the traditional domain of the states.'" *Emard*, 153 F.3d at 961 (citing *Boggs*, 117 S. Ct. at 1760).

Courts therefore require that

> State family and family-property law must do "major damage" to "clear and substantial" federal interests before the Supremacy Clause will demand that state law by overridden.

Hisquierdo, 439 U.S. at 581. ERISA does not preempt application of state laws that merely redesignate the beneficiary under an ERISA plan, because such laws do not do "major damage" to a "clear and substantial" federal interest. *Emard*, 153 F.3d at 961.

While we are not bound by the Ninth Circuit's interpretation of ERISA preemption,[14] we find it persua-

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distribution of benefits." *Carland*, 935 F.2d at 1122. Compliance with RCW 11.07.010 requires no more.

[14] Even where the matter is one of federal law, Washington courts are not bound by the interpretations of non-constitutional federal law rendered by inferior courts – even

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sive and adopt its analysis in *Emard*. *Emard* is consistent with the United States Supreme Court's current interpretation of ERISA preemption. The Supreme Court's recent cases indicate that ERISA preemption has been much too broadly construed in the past and must be narrowed; *Emard* follows that directive in a principled, logical manner. Although *Emard* addresses only life insurance, the same principle should apply to pension fund benefits.

We therefore hold that, under the circumstances of the case before us, ERISA does not preempt RCW 11.07.010, a statute similar to the one at issue in *Emard*.[15] Consequently, under the plain language of the statute, the children are entitled to the proceeds of their father's pension fund, which have not yet been distributed. They are also entitled to the insurance proceeds.

But whether they can look to the insurer for this amount depends on whether the children demanded the insurance proceeds in compliance with the requirements of RCW 11.07.010.[16] If they did not comply with RCW 11.07.010, the children will not be able to recover the

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the Ninth Circuit. *State v. Barefield*, 110 Wn.2d 728, 732 n.2, 756 P.2d 731 (1988); *Amalgamated Clothing Workers of Am. V. Richman Bros.*, 348 U.S. 511, 75 S. Ct. 452, 99 L.Ed. 600 (1955).

[15] Although statutes similar to RCW 11.07.010 have been found to be preempted, all of those cases arose before the Supreme Court announced its new reasoning with regard to ERISA preemption. *See, e.g., Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126 (6th Cir. 1996).

[16] The plan administrator must have actual knowledge of dissolution and/or conflicting claims for proceeds of a given policy before being liable for the decision to make payment to the named beneficiary. RCW 11.07.010(3).

insurance proceeds from the insurer, but instead will have to look solely to Donna for the funds.[17] RCW 11.07.010(3).

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[17] As Donna notes, seemingly the most relevant Washington case is *Aetna Life Ins. Co. v. Wadsworth*, 102 Wn.2d 652, 689 P.2d 46 (1984). *Wadsworth* involved a remarried man dying while his ex-wife was still designated as beneficiary of his life insurance policy. The woman to whom he was married at the time of his death opposed his ex-wife's collecting under the policy. Without mentioning ERISA, the court ruled:

> In general, the beneficiary named in the policy will be entitled to the proceeds to the extent that the present spouse's community property rights are not invaded. We believe this general rule should not apply, however, where the dissolution decree clearly indicates an intent to divest the former spouse of his or her expectancy as beneficiary, so long as that intention is acted upon within a reasonable time after dissolution by formal execution of the change of beneficiary. If the intention is not acted upon within a reasonable time [conclusive presumption after one year after date of dissolution], the owner should be deemed to have decided to retain the named beneficiary as the one entitled to the proceeds.

Wadsworth, 102 Wn.2d at 662. The court added, "if the insured spouse dies within a reasonable time period without formally executing the previously stated intention to change the beneficiary, the former spouse will not be entitled to the proceeds." *Wadsworth*, 102 Wn.2d at 663.

Because the Egelhoff divorce decree did not mention life insurance policy, Donna could arguably be entitled to the insurance proceeds under *Wadsworth*. But whether *Wadsworth* is still good law is highly questionable on two grounds: (1) the opinion does not mention ERISA (and seems to have concerned an ERISA-covered policy, given that it was "paid in full on a monthly basis as a benefit of employment by the Boeing Company." *Wadsworth*, 102 Wn.2d at 654); and (2)

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We reverse summary judgment granted to Donna and remand for entry of summary judgment for the children with regard to the pension plan and life insurance proceeds.[18]

/s/
Hunt, J.

We concur:

/s/
Bridgewater, J.

/s/
Armstrong, J.

[Footnote continued from previous page]
RCW 11.07.010 was not in existence at the time of the Wadsworth decision (RCW 11.07.010 was originally enacted by Laws of 1993, ch. 236, § 1). As a result, we look elsewhere, namely, the Ninth Circuit's opinion in *Emard*, for a contemporary analysis.

[18] Donna is clearly liable to the children for the insurance proceeds. But a determination, under RCW 11.07.010, of whether the children can look to the insurer for the life insurance benefits erroneously paid to Donna, or whether they can look only to Donna herself for reimbursement of the funds she wrongfully received, cannot appropriately be made as part of the present action. Because the insurer, Aetna, is not a party to this case, the children will have to bring a separate action against Aetna should they seek to recover from it the proceeds wrongly paid to Donna.

APPENDIX C

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF PIERCE

IN THE MATTER OF THE ESTATE OF DAVID A. EGELHOFF, Deceased.	NO. 94-4-01619-1 ORDER GRANTING MOTION FOR SUMMARY JUDGMENT OF DONNA R. EGELHOFF

THIS MATTER coming before the undersigned judge on July 27, 1997 on cross motions for summary judgment filed on behalf of the Estate of David A. Egelhoff for the benefit of Samantha Egelhoff and David Egelhoff, Jr. ("Petitioner") by their attorney, Michael Jordan of Jordan, Imler & McGovern, P.S. and on behalf of Donna Rae Egelhoff ("Respondent") by her attorneys, Henry Haas and Ryan Rein of McGavick Graves, P.S.; the court having heard the oral argument of counsel and having considered the following:

1. The stipulated facts as set forth in the Petitioner and Respondent's memorandums in support of their respective motions for summary judgment;

2. The memorandum in support of the motion for summary judgment of the Petitioner;

3. The Respondent's memorandum of authorities in opposition to Petitioner's motion and in support of Respondent's motion for summary judgment; and

The court finding that there is no genuine disputed material issue of fact and concluding that the Petitioner's motion for summary judgment should be denied and Respondent's motion for summary judgment should be granted. Now, therefore, it is hereby

ORDERED that the motion for summary judgment of the Petitioner, the Estate of David A. Egelhoff and the surviving children, David A. Egelhoff, Jr. and Samantha Egelhoff, be, and the same is hereby denied; it is further

ORDERED that the motion for summary judgment of the Respondent Donna Rae Egelhoff, be, it is hereby granted. It is further

ORDERED that the injunction entered herein on December 5, 1994, be, it is hereby dissolved and of no further force or effect; it is further

ORDERED that the Boeing Company Voluntary Investment Plan ("VIP") of David Egelhoff, deceased, social security number 569-70-6114, should be administered in accordance with the Employment Retirement Income Security Act of 1974 ("ERISA") and that the designated beneficiary, Donna Rae Egelhoff shall have all legal rights thereto; it is further

ORDERED that neither Petitioner or Respondent shall be awarded or recover any attorney's fees or costs in this matter.

DONE IN OPEN COURT THIS 8th Day of August, 1997.

/s/
JUDGE KAREN STROMBOM

* * * * *

APPENDIX D

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF PIERCE

SAMANTHA EGELHOFF, a minor by and through her natural parent KATE BREINER, and DAVID EGELHOFF, a single person, Plaintiffs, vs. DONNA RAE EGELHOFF, and "JOHN DOE" EGELHOFF, wife and husband, Defendants.	No. 96-2-12626-3 SUMMARY JUDGMENT

THIS MATTER having come before the undersigned Judge on October 10, 1997 upon the Defendant's Motion for Summary Judgment against the Plaintiffs, and each of them; Plaintiffs being represented by their attorney, MICHAEL W. JORDAN of JORDAN, IMLER & McGOVERN, P.S., and the Defendant, DONNA RAE EGELHOFF, being represented by her attorney, HENRY HAAS of McGAVICK GRAVES, P.S., and the Court having considered the following:

1. The facts as set forth in Defendant's Memorandum of Authorities in Support of Motion for Summary Judgment;
2. Defendant's Motion for Summary Judgment;
3. Declaration of Henry Haas in Support of Defendants' Motion for Summary Judgment;
4. Memorandum in Support of Defendants' Motion for Summary Judgment;

5. Certified Statement of Counsel in Opposition to Defendants' Motion for Summary Judgment;
6. Plaintiffs' Objection to Defendants' Exhibits;
7. Second Certified Statement of Michael W. Jordan;
8. Defendant's Response to Plaintiffs' Objection to Defendant's Exhibits; and
9. Defendant's Response to Plaintiffs' Memorandum in Opposition to Motion for Summary Judgment;

and the Court having considered the same, and finding that there are no genuine issues as to any material fact and that the moving party is entitled to a judgment as a matter of law; now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that the Defendant's Motion for Summary Judgment against the Plaintiffs is hereby **GRANTED**. It is further

ORDERED, ADJUDGED AND DECREED that the Boeing Company Life Insurance Plan of David Egelhoff, deceased, social security number 569-70-6114, should be administered in accordance with the Employment Retirement Income Security Act and the designated beneficiary, Donna Rae Egelhoff shall have all legal rights to the proceeds which have been paid thereto.

DONE IN OPEN COURT this 10th day of October, 1997.

/s/
JUDGE

* * * * *

APPENDIX E

No. 67626-7
(Court of Appeals Nos. 22293-1-II
& 22562-0-II (Consolidated)

Supreme Court of the
State of Washington

IN THE MATTER OF THE ESTATE OF DAVID A. EGELHOFF, deceased

DONNA RAE EGELHOFF and "JOHN DOE" EGELHOFF, wife and husband,

Petitioners,

v.

SAMANTHA EGELHOFF, a minor, by and through her natural parent KATE BREINER; and DAVID EGELHOFF, a single-person,

Respondents.

SECRETARY OF LABOR'S BRIEF AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

* * * * *

INTEREST OF THE SECRETARY OF LABOR

The Secretary of Labor ("the Secretary") is charged with the mandate of interpreting and enforcing the provisions of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1001 et seq. As the federal officer with primary enforcement authority for numerous ERISA provisions, the Secretary has a strong interest in ensuring that preemption principles are applied appropriately by the courts. See Donovan v. Cunningham, 716 F.2d 1455 (5th Cir. 1983), cert. denied, 467 U.S. 1251 (1984). The Secretary's interests also include promoting uniformity of law, protecting beneficiaries, enforcing fiduciary standards, and ensuring the financial stability of employee benefit plan assets. Secretary of Labor v. Fitzsimmons, 805 F.2d 682 (7th Cir. 1986) (en banc).

The Appeals Court held that ERISA does not preempt a Washington Probate Statute, RCW 11.07.010, that automatically revokes a divorced spouse's beneficiary designation under his or her ex-spouse's ERISA pension and welfare plans. If left standing, the Appeals Court's decision would subject plans to a multiplicity of regulation varying with each state and prevent the nationally uniform administration of employee benefit plans that ERISA intended. New York State Conference of Blue Cross & Blue Shield Plans v. Travelers, 514 U.S. 645, 657, 115 S. Ct. 1671, 1677-78, 131 L.Ed.2d 695 (1995).

Because of the adverse impact that Appeals Court's rulings will have on laws that are in the public interest, the Secretary submits her brief to bring these important interests to the Court's attention. The Supreme Court's decision in this case is likely to have a significant impact on the development of the law in this important area.

STATEMENT OF THE CASE

The Secretary adopts the statement of the case set forth in the Petition for Review. For clarification, the parties to this action are referred to throughout the brief in the following manner. The Respondents, the children of Mr. Egelhoff and his first wife, are hereinafter referred to as the "children", and the Petitioner, Mr. Egelhoff's second wife, is hereinafter referred to as "Mrs. Egelhoff".

ARGUMENT

ERISA is a "comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." Shaw v. Delta Air Lines. 4G3 U.S. 85, 90, 103 S. Ct. 2890, 2896, 77 L.Ed.2d 490 (1983). ERISA establishes the regulation of employee benefit plans "as exclusively a federal concern." Travelers, 514 U.S. at 656. ERISA's general preemption clause, Section 514(a), preempts "any and all State laws insofar as they . . . relate to any employee benefit plan." (emphasis added). The Supreme Court instructs that courts should look "to the objectives of the ERISA statute as a guide to the scope of the state law the Congress understood would survive." Id. at 656; Id. at 1677.

"The basic thrust of the preemption clause . . . was to avoid a multiplicity of regulation in order to permit nationally uniform administration of employee benefit plans." Travelers, 514 U.S. at 657. If a state law does not threaten that goal, it is not preempted by § 514(a). However, state laws that subject plans to "a multiplicity of regulation" are preempted.

A court need not determine whether the "relate to" language of Section 514 supports preemption; however, where the state law "conflicts with the provisions of ERISA or operates to frustrate its objectives." Boggs v. Boggs, 520 U.S. 833, 941, 117 S. Ct. 1754, 1760, 138 L.Ed.2d 45 (1997). "In the face of [a] direct clash between state law and the provisions and objectives of ER-

ISA. the state law cannot stand." Boggs, 520 U.S. at 944. See also John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank, 510 U.S. 86, 100, 114 S. Ct. 517, 526, 126 L.Ed.2d 524 (1993) ("[I]n the case of a direct conflict, federal supremacy principles require that state law yield").

As outlined more fully below, RCW 11.07.010 is preempted as applied to the pension plan, even in the absence of Section 514, because it conflicts with ERISA's anti-alienation and QDRO provisions. Although RCW 11.07.010 does not conflict with any ERISA provisions governing welfare plans, it is also preempted as applied to both the pension and welfare plan by Section 514 because it "relates to" such plans.

I. RCW 11.07.010 IS PREEMPTED WITH RESPECT TO THE 401(K) PLAN BECAUSE IT CONFLICTS WITH ERISA.

ERISA governs, with breadth and detail, the rights of pension plan participants and beneficiaries, as well as the obligations of the plan with respect to the payment of benefits. Among those rights is the right of the beneficiary, protected by ERISA's anti-alienation provision, actually to receive the benefits from the plan. And among the rights and obligations are a number of carefully focused provisions requiring that pension benefits be paid, in specific circumstances, to particular individuals, i.e., surviving spouses or named beneficiaries.

The 401(k) plan is governed by ERISA's anti-alienation provision which specifies that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 31056(d)(1). The anti-alienation provision was intended to ensure that the participant in, or beneficiary of, a retirement plan actually receives the benefits to which he or she is entitled. See H.R. Rep. No. 807, 93d Cong., 2d Sess. 68 (1974). Congress intended by that provision "to safeguard a stream of income for pensioners (and

their dependents)" and to ensure that pension benefits are not diverted to others. Guidry v. Sheet Metal Workers Nat'l Pension Fund, 493 U.S. 365, 37G, 110 S. Ct. 680, 687, 107 L.Ed.2d 872 (1990). See also Boggs, 520 U.S. at 651.

ERISA, as amended by the Retirement Equity Act of 1984 ("REA"), Pub. L. No. 98-357, SB Stat. 1426, establishes important rights to pension benefits for the surviving spouse of a participant. For example, ERISA Section 205(a), as amended by BEA, 29 U.S.C. § 1055(a), requires all defined benefit plans. and most defined contribution plans, to provide an annuity for a surviving spouse.

In addition, ERISA, as amended by REA, has a specific provision intended to ensure the equitable treatment of divorced spouses of participant. in pension plans. Boggs, 520 U.S. at 847. ERISA requires a plan to pay a participant's pension benefits to an alternate payee in accordance with a state "domestic relations order" if the order meets the detailed requirements that ERISA prescribes for a qualified domestic relations order ("QDRO"). 29 U.S.C. § 1056(d)(3)(A).[1] ERISA provides a limited exception to the anti-alienation provision for QDROs, 29 U.S.C. S 1056(d)(3)(A), and saves them from preemption, 29 U.S.C. S 1144(b) (7). Boggs, 520 U.S. at 846.

The "limited exception" to the anti-alienation provision for QDROs, see S. Rep. No. 575, 98th Cong., 2d Sess. 19 (1984), was intended to address the serious

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[1] In order to guarantee her rights as beneficiary under the 401(k) plan, Mrs. Egelhoff could have obtained a domestic relations order and submitted it to the plan for approval as a QDRO. A QDRO would presumably removed the 401(k) plan from consideration under RCW 11.07.010.

problem facing divorced spouses who are economically dependent on their former spouses (the plan participant). Boggs, 520 U.S. at 854. Congress made clear, however, that QDROs must "meet specific requirements if they are to be honored by the plan" in order to "minimize the burden on the plan and eliminate confusion over what the court is ordering." H.R. Rep. No. 655, 98th Cong., 2d Sess., Pt. 1, at 39 (1984). Only QDROS meeting those requirements are also exempted from preemption. See Boggs, 520 U.S at 846; S. Rep. No. 575, 98th Cong. 2d Sess. 19 (1964).

ERISA thus includes special provisions to secure interests in pension benefits of surviving spouses, divorced spouses, and beneficiaries. ERISA does not, however, contain similar provisions recognizing a right to plan benefits for the participant's heirs who are not named as beneficiaries or who are not surviving spouses. Boggs, 520 U.S. at 847. The anti-alienation provision ensures that pension benefits are not diverted before they are distributed to the participant or beneficiary for whom they are intended.

In Boggs, the Supreme Court looked to the Supremacy Clause to provide the basis for the preemption of Louisiana community property law. The children of the participant/decedent and the participant/decedent's surviving spouse were competing for the decedent's pension benefits. The children inherited their mother's community property interest in the participant/decedent's plan under state law at her death. The ERISA plan, however, required the payment of benefits to the surviving spouse The Court concluded that the community property law was preempted because "in the face of [a] direct clash between state law and the provisions and objectives of ERISA, the state law cannot stand. Conventional conflict pre-emption principles require pre-emption 'where compliance with both federal and state regulations is a physical impossibility,' . . . or where state law stands as an obstacle to the

accomplishment and execution of the full purposes and objectives of Congress." Boggs, 520 U.S. at 844, quoting, Gade v. National Solid Wastes Management Ass'n, 505 U.S. 88, 98, 112 S. Ct. 2374, 2383, 120 L.Ed.2d 73 (1992).

Like the community property law in Boggs, RCW 11.07.010 directly conflicts with ERISA. The statute reads:

> Non probate assets on dissolution or invalidation of marriage
>
> (1) This section applies to all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state of a decree of dissolution of marriage or a declaration of invalidity.
>
> (2) (a) If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked.
>
> . . .
>
> (5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:
>
> (a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account.

If RCW 11.07.010 is allowed to stand, it would revoke Mrs. Egelhoff's right to receive benefits under the

401(k) plan as the named beneficiary. Such a result would be in conflict with both the anti-alienation and QDRO provisions of ERISA. Because "[s]tates are not free to change ERISA's structure and balance," RCW 11.07.010 is, therefore, preempted. Boggs, 520 U.S. at 944.

The Appeals Court completely ignored Boggs despite its obvious application to the 401(k) plan. Instead, the Appeals Court followed the Ninth Circuit's decision in Emard v. Hughes Aircraft Co., 153 F.3d 949 (9th Cir. 1998), cert. denied, 119 S. Ct. 903 (1999). Emard, however, involved a welfare plan, which is not subject to ERISA's anti-alienation and QDRO provisions. The Emard court, therefore, was not faced with a statute that directly conflicted with ERISA and the decision does not provide meaningful guidance in determining whether RCW 11.07.010 is preempted with respect to the pension plan at issue here.

II. RCW 11.07.010 IS PREEMPTED WITH RESPECT TO BOTH THE PENSION PLAN AND THE LIFE INSURANCE PLAN BECAUSE IT RELATES TO PLANS

RCW 11.07.010 is also preempted with respect to benefits payable under both the pension and welfare plans because it relates to those plans within the meaning of ERISA 5 514. A state law "relates to" a plan if it has a "connection with" or "reference to" a plan. Shaw, 463 U.S. at 96-97; Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 47, 107 S. Ct. 1549, 1552-53, 95 L.Ed.2d 39 (1987). ERISA preempts a state law that has a connection with an ERISA plan when it "mandate[s] employee benefit structures or their administration" or when the state law provides an "alternate enforcement mechanism." Travelers, 514 U.S. at 646. In our view, RCW 11.07.010 "relates to" ERISA plans and is therefore preempted because it affects the plans' administrative schemes.

RCW 11.07.010 is aimed at spousal designations as beneficiaries in employee benefit plans. In the event of divorce, a spousal designation as the beneficiary under the plan is automatically revoked. In contrast, the ERISA plans at issue here provide that benefits be paid to the designated beneficiary; however, if the participant wishes to change that designation, he or she may do so in writing at anytime. RCW 11.07.010 is therefore imposing an alternate administrative scheme on the plans by effecting a change to the beneficiary designation and requiring the plans to do something other than that which the plan documents require.

The Appeals Court, therefore, erred when it found that RCW 11.07.010 was not preempted by ERISA because it did not implicate or affect the administration of ERISA plans. Matter of Estate of Egelhoff, 93 Wash.App. 314, 325, 968 P.2d 924, 929 (Wash. 1998) (RCW 11.07.010 "does not affect the administration of plans; instead it affects merely the ultimate ownership of distributed benefits"). Plans have an interest in knowing who the beneficiaries are, and in not being subject to suits by other persons asserting claims to benefits. Here, in fact, the plans have held the benefits, awaiting the outcome of the litigation between the parties. Although the parties here have not sued the plans, future heirs in the parties' situation might sue a plan directly. Competing heirs from different states, asserting conflicting interests under various state laws, might also bring actions against a plan. Consequently, the plans' interest in avoiding a multiplicity of conflicting state regulation is also implicated and requires preemption.

As noted above, the Appeals Court's decision in Egelhoff finding that RCW 11.07.010 was not preempted stands alone among the other federal Appeals Courts that have decided this issue. Other courts dealing with similar statutes found them preempted by ERISA. See Brandon v. Travelers Ins. Co., 18 F.3d 1321, 1325 (5th Cir. 1994), cert. denied, 513 U.S. 1081 (1995)

(ERISA preempts state law requiring re-designation of spouses in order to maintain status as beneficiary after divorce); Krishna v. Colgate Palmolive Co., 7 F.3d 11, 15 (2d Cir. 1993) (ERISA preempts interpleader action brought under New York's probate statute, in which the parties sought to gain beneficiary status under an ERISA life insurance plan through a codicil to the participant's will); Metropolitan Life Ins. Co. v. Hanslip, 939 F.2d 904, 906 (10th Cir. 1991) (ERISA preempts statute which automatically revoked a spouse's designation as beneficiary upon divorce); MacLean v. Ford Motor Co., 831 F.2d 723, 727 (7th Cir. 1987) (ERISA preempts testamentary transfer law in determining beneficiary of testator's pension plan). For example, in Metropolitan Life Ins. Co. v. Pressley, 82 F.3d 126 (6th Cir. 1996), the court found that the state statute that required judgments of divorce to determine the rights of the non-participant ex-spouse to the ERISA life insurance plan proceeds was preempted by ERISA. The court then followed the directives of ERISA § 404(a)(1)(D) and found that the beneficiary designation form, as a plan document, required that the life insurance proceeds be paid to the ex-spouse, because she was the named beneficiary under the plan. Id. at 130. The Secretary believes that these opinions are better reasoned than Emard and should be followed.[2]

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[2] In Brandon, after finding preemption, the court resorted to the federal common law of waiver to determine the proper beneficiary. The court found waiver based on specific language in the divorce decree evidencing an intent to waive. See Brandon, 18 F.3d at 1325. The Secretary does not have a position as to whether resorting to the federal common law of waiver was appropriate in this case. However, the Court need not reach that issue here concerning the life insurance plan because there was no instrument in which the Mrs. Egelhoff even arguably purported to waive her entitlement to

[Footnote continued on next page]

In Emard, a surviving spouse sued under California's community property law, claiming an entitlement to at least half of the decedent/participant spouse's life insurance proceeds. The participant, however, never changed the life insurance plan's beneficiary designation that named her ex-husband. The Ninth Circuit held that California's community property law, which would require distribution of ERISA life insurance proceeds contrary to the participant's designation of beneficiary, was not preempted. The Ninth Circuit concluded that the participant's beneficiary designation form was not a plan document and therefore did not govern the plan's operation: "we see no indication that Congress intended to safeguard an individual beneficiary's rights to the proceeds of an ERISA insurance plan as against another person claiming superior rights, under state law, to those proceeds." Emard, 153 F.3d at 958. Finally, the Ninth Circuit in Emard held that California's community property law did not affect the administration of plans, but rather, the ultimate ownership of distributed benefits.

As stated previously, the Appeals Court's decision to follow the Emard court's preemption analysis was in error. By finding that the community property law was not preempted by ERISA, the Emard court misapplied the Supreme Court's "relates to" analysis. A state law that requires a plan to pay benefits in a manner contrary to the directives of the plan clearly affects and relates to that plan's administration. Such a law mandates the

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benefits, rather she was divested solely by operation of RCW 11.07.010. Regarding the 401(k) plan, an argument for waiver is inconsistent with ERISA's anti-alienation provision which protects a named beneficiary's right to receive benefits under a pension plan. Such an argument for waiver would therefore conflict with ERISA and as such be preempted under the Supremacy Clause.

plan's administration in the manner in which Travelers instructs is prohibited by ERISA's preemption provision. Travelers, 514 U.S. at 646.

Preemption of RCW 11.07.010 is further supported by the "reference to" test set forth in Shaw, 463 U.S. at 96-97 (1983). RCW 11.07.010 explicitly refers to an "employee benefit plan." In Shaw, the Supreme Court found that a state law was preempted because it had "a connection with or reference to" an ERISA plan" (emphasis added). In California Div. of Labor Standards Enforcement v. Dillingham Construction, N.A., Inc., 519 U.S. 316, 325, 117 S. Ct. 832, 838, 136 L.Ed.2d 791 (1997), the Supreme Court stated that the "reference to" test is met where the state law either "acts immediately and exclusively upon ERISA plans" or "the existence of ERISA plans is essential to the law's operation." As discussed above, RCW 11.07.010 acts immediately upon the entities to which it applies, including employee benefit plans, by directly affecting the administration of such plans. Moreover, the statutory reference to employee benefit plans is essential to the law's operation because, if the term "employee benefit plan" were deleted from Section 5 (a) the statute would not operate. RCW 11.07.010 is therefore preempted under ERISA § 514(a) and the Appeals Court's decision must be reversed.

CONCLUSION

For the foregoing reasons, the Appeals Court's decision that RCW 11.07.010 is not preempted by ERISA was erroneous and should be reversed.

Dated: August 13, 1999

Respectfully submitted,

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